1949.

SUPREME COURT OF THE UNITED STATES.

No. 90.

THE UNITED STATES, APPELLANT,

VERSUS.

GEORGE J. F. CLARKE.

APPEAL FROM SUPERIOR COURT OF EAST FLORIDA.

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Before the honorable the judge of the superior court for the eastern district of Florida, and specially authorized by law to receive and adjudicate claims and titles to land in the district of East Florida, be it remembered, that, on the fourth day of April, in the year of our Lord one thousand eight hundred and twenty-nine, George J. F. Clarke, by Joseph B. Lancaster, his attorney, brought and filed in the clerk's office of the superior court for the eastern district of Florida his petition or claim to certain land therein mentioned; which said petition or claim is in the words and figures following, to wit:

TERRITORY OF FLORIDA, *Eastern District, Superior Court,* } *sct.:*

Petition for confirmation.

To the honorable the judge of said court: the petition of George J F. Clarke, an inhabitant of St. Augustine, in the Territory aforesaid, and native of said Florida, respectfully showeth—

That, for services performed by your petitioner as a subject of the King of Spain antecedently to the thirteenth of December, in the year of our Lord one thousand eight hundred and seventeen, for the use, and to the benefit of that nation, there was, upon the seventeenth day of December, in said year eighteen hundred and seventeen aforesaid, a decree or grant made in favor of your petitioner for the number of twenty-six thousand acres of land in sundry places, as will more fully herein hereafter appear, by which aforesaid decree or grant your petitioner was vested with an absolute right or property in the said lands; and which aforesaid decree or grant was made and executed, and signed by the then acting governor of the province of East Florida, Don Jose Coppinger, who was by the proper Spanish authorities duly vested with the requisite power to make the decree or grant aforesaid; all of which will more fully and at large appear by reference to the petition of your petitioner to the aforenamed Governor Coppinger, for that purpose made and presented, and bearing date upon the 13th of December, 1817, as aforesaid, together with the decree or grant thereto appendant, dated upon the 17th of December, 1817, as aforesaid; a certified translation of which said petition and decree or grant, the original being in Spanish, marked exhibit No. 1, is herewith shown, and made a part of this petition.

Your petitioner further showeth, that, in virtue and pursuance of the decree or grant aforesaid, which is made in conformity with his memorial for that purpose, twenty-two thousand acres of said grant were allowed to be located in the hammocks of Cuscovilla and Chachala, situated to the west of the part of St. John's river, where there stood a store of the house of Panton, Leslie & Co., about forty-five miles distant from it, and the remaining four thousand acres at a place called Yallahassasa, south of the public road leading from the store of the aforesaid firm, managed by John Hambly; all of which said places are within the jurisdiction of this court.

Your petitioner further showeth that, in pursuance of said grant, twenty thousand acres of land lying at Cuscovilla aforesaid were sold by him to John de Entralgo, by deed bearing date the day of , to which he makes no claim. The remaining six thousand acres were surveyed as follows: two thousand acres thereof in Chachala hammock, laying on the west side of Payne's savanna; the first line of which begins at a pine, and runs S. 45°, E. 125 chains, to a stake; thence N. 45°, E. 90 chains, to a stake; thence S. 77°, E. 115 chains, to a stake; thence N. 10°, W. 105 chains, to a stake; thence S. 80°, W. 141 chains 42 links, to a live oak; thence S. 10°, E. 6 chains, to an iron wood; thence N. 45°, W. 34 chains, to a wahoo; thence S. 45°, W. 50 chains, to a laurel; thence N. 45°, W. 25 chains, to a sweet gum; thence S. 45°, W. 40 chains, to the beginning: of this survey, your petitioner has sold to Belton A. Copp, esquire, fifteen hundred acres. The remaining four thousand acres are located at Yallahassesa, in the grant named, and are in three surveys; two of fifteen hundred acres each, and one of a thousand acres, bounded as follows, to wit: fifteen hundred acres thereof laying at Yallahassasa, on the road from St. John's river to Alachua, beginning at a live oak, and running thence N. 45°, E. 17 chains, to a pine; thence N. 45°, W. 50 chains, to a pine; thence W 51 chains, to a pine; thence S. 45°, W. 174 chains, to a pine; thence S. 170 chains, to a pine; thence S. 70°, E. 58½ chains, to a bay; thence N. 10°, E 102 chains, to a live oak; thence, on the margin of Little Orange lake to the beginning: another fifteen hundred acres thereof, adjoining the said place last named, begins at a pine, and runs thence N. 25°, W. 125 chains, to a pine; thence W. 140 chains, to a pine; thence 25°, 125 chains, to a pine; thence E. 140 chains, to the beginning: and one thousand acres thereof at the said place called Yallahassasa, and near the road aforesaid, bounded as follows: beginning at a stake, and running thence S. 141 chains 42 links, to a stake; thence E. 71 chains 71 links, to a pine; thence N. 141 chains 42 links, to a stake; thence W. 70 chains 71 links, to the beginning.

Your petitioner further states, that his aforesaid claims, and the surveys thereon made, have been filed before the Board of Land Commissioners appointed to ascertain claims and titles to lands in East Florida, and that he is informed, and believes, that they have not reported the said claim, forged or antedated, but have recommended to the Government of the United States the confirmation of the claim herein set forth; a copy of all which proceedings will be herewith filed, marked exhibit No. 2, and prayed to be made part hereof.

Your petitioner further states that he is advised, and believes, and alleges, and avers, that his claim aforesaid is good and valid, and invests him with a fee simple estate in the lands in the grant mentioned, by the usages, customs, laws, and ordinances of the King of Spain; that his right became vested from the day of the date of the grant to him aforementioned; and

that by the treaty between Spain and the United States, of the 22d February, 1819, the United States are bound to recognize and confirm his aforesaid title to him, in as full and ample a manner as he had, and held the same under the Spanish Government; without this, the United States, as far as he knows, are the rightful claimants to said lands.

Your petitioner, in consideration of the premises, prays that this honorable court will take jurisdiction of this, his petition, and that a copy of this petition, and a citation to show cause, may be served on Thomas Douglass, United States' district attorney for this district, pursuant to the provisions of the statute in such cases made and provided; and, finally, that your honor may decree to your petitioner the land in this his petition mentioned; and your petitioner, as in duty, &c.

JOS. B. LANCASTER,
Attorney for Geo. J. F. Clarke.

A copy of the foregoing petition, with a citation thereto annexed, was delivered to the marshal of this district, to serve on the attorney of the United States for the same district; and the return of the said marshal thereon is in the words and figures following, to wit: "Executed 23d April, 1829, by giving copy to Thomas Douglass, esquire, United States' attorney."

WATERS SMITH, *Marshal.*

And afterwards, to wit, on the second day of May, in the year of our Lord one thousand eight hundred and twenty-nine, Thomas Douglass, esquire, United States' attorney for the district of East Florida, brought and filed in the clerk's office aforesaid his answer to the said petition; which said answer is in the words and figures following, to wit:

Superior Court, May term, 1829.

THE UNITED STATES OF AMERICA,
ats.
GEORGE J. F. CLARKE.

Answer of U. S. attorney.

The answer of Thomas Douglass, United States' attorney for the district of East Florida, to the petition or bill of complaint of George J. F. Clarke. The said attorney, in the name, and for and on behalf of the same United States, saving and reserving to them now, and at all times hereafter, all and all manner of benefit of exception to the manifold errors, defects, and irregularities in the said petition or bill of complaint contained, for answer thereunto, or to so much thereof as it is material and necessary for them to answer unto, answereth and saith, that he has no knowledge of any such grant having been made by Don José Coppinger, acting governor of the said province of East Elorida, on the sixth day of April, in the year of our Lord one thousand eight hundred and sixteen, (or at any other time,) to the said George J F. Clarke, for twenty-six thousand acres of land, as is alleged, set forth, and described in the said petition or bill of complaint; nor has he any knowledge of the services said to have been rendered, expenses incurred, or losses sustained by the said George J. F Clarke, as is mentioned and alleged in the said petition of the said George J. F. Clarke preferred to the aforesaid Governor Coppinger for the purpose of obtaining the said supposed grant, nor of the making of the said

surveys in the said petition or bill of complaint (first aforesaid) mentioned and described, and cannot therefore either admit or deny the same, but respectfully prays this honorable court to require of the said George J. F. Clarke due proof of all the matters and things in the said petition or bill of complaint mentioned, alleged, and set forth, as they are therein stated, and particularly of the making, signing, executing, and delivering of the said grant to the said George J. F. Clarke in manner and form as in the said petition or bill of complaint alleged, and of all the matters and things in the said petition of the said George J. F. Clarke, which it is alleged was preferred to the said Governor Coppinger, by the said George J. F Clarke, for the purpose of obtaining the said supposed grant, which said petition and decree, or supposed grant aforesaid, are marked exhibit No 1., and made a part of the said petition or bill of complaint, and of the making of the said surveys as in the said petition or bill of complaint is alleged, according to law and the usages of courts of equity.

And this respondent admits that the aforesaid claims and surveys have been filed before the board of land commissioners appointed to ascertain claims and titles to lands in East Florida, and that the said board of commissioners recommended the same to the Government of the United States for confirmation; but this respondent denies that the said supposed grant is good and valid, or that it invests the said George J. F Clarke with a fee simple (or any other estate) in said lands, or that the said United States are bound in any manner to recognize or confirm the said supposed grant, or any part thereof, to the said George J. F Clarke; and insists and avers that said supposed grant was obtained, if obtained at all, by the fraud and cunning of the said petitioner; and avers that if any such grant was ever made by the said Don José Coppinger to the said George J. F. Clarke, in manner and form as aforesaid, it was made contrary to, and in violation of, the laws, ordinances, and royal regulations of the Government of Spain aforesaid, which were in force in the province of East Florida, in which said province the said lands are situated, providing for the granting of lands in East Florida aforesaid, and without any authority on the part of the said Don José Coppinger to make it; and, further, that no power had been conferred upon the said Don Jose Coppinger by the said Spanish Government to make grants of land of the magnitude and description of the one claimed and described by the said Georg J. F. Clarke in his said petition or bill of complaint; all of which will more fully appear by reference to the said laws, ordinances, and royal regulations, which this respondent prays leave to refer to, and read on the hearing of this cause.

And this respondent further avers, that, at the time when it is alleged that the said supposed grant was made, it was, and for a long space of time had, been the fixed and settled policy of the Spanish Government aforesaid, to parcel out its colonial domain with reference solely to the objects of increasing the population of its provinces, and to benefit its indigent subjects, and that, according to that policy, grants for the purpose of speculation were never tolerated, and that the aforesaid grant was obtained by the said George J. F. Clarke, (if it was obtained at all,) for the purpose of speculation only, and that it was never approved by the Spanish Government aforesaid, and that it was, and is, wholly null and void.

And this respondent further saith, that the right and title to said lands was vested in the Florida tribes of Indians, commonly called the Seminole Indians, at the time when the said grant is alleged to have been made; and

that the said Indians were then in the possession and occupancy thereof, and and that their right and title thereto was never extinguished until the eighteenth day of September, in the year of our Lord 1823, on which said day a certain talk was held at a place called Moultrie, in East Florida aforesaid, by and between William P. Duval, James Gadsden, and Benardo Segui, commissioners for and on behalf of the same United States, and certain chiefs and warriors of the Florida tribes of Indians, on the part and behalf of the said tribes of Indians, at which said talk a treaty was made by, and between, the said United States and the said Florida tribes of Indians, by the first article of which the said chiefs and warriors, for themselves and their tribes, in consideration of the promises and stipulations therein after mentioned, did cede and relinquish all claim or title which they had to the whole Territory of Florida, with the exception of such district of country as should in said treaty be allotted to them.

And this respondent further saith, that the aforesaid tracts of lands were embraced in, and formed a part of the lands which were ceded to the said United States by virtue of said treaty, and that it was not included in the district of country by the said treaty allotted to the said Indians, all of which will more fully appear by reference to the saidt reaty, which this respondent prays leave to introduce and read on the hearing of this cause. And this respondent submits that, by certain of the said laws, ordinances, and royal regulations, it is provided and specially commanded that the distribution of lands should be made with equity, and without any preference of persons or injury to the Indians, and that those which might to Spaniards to the injury of the Indians, should be restored to their rightful owners. And this respondent avers that the said George J. F. Clarke was, at the time when the said grant is alleged to have been made, a Spanish subject, and that the grant aforesaid, (if it was made as is alleged,) was made in prejudice of the right and to the injury of the said Indians, and that the said lands ought to have been restored to them as the rightful owners thereof. And this respondent insists that said supposed grant was made since the 24th January, 1818, and that it is antedated.

And now, having fully answered all the matters and things in the said petition or bill of complaint alleged, the said attorney prays that the said United States may be hereof discharged, and that their reasonable costs and charges by them, in and about the defence of this suit, paid, laid out, and expended, may be adjudged and decreed to them, &c.

THOS. DOUGLASS, *U. S Att'y, &c.*

And afterwards, to wit, on the seventeenth day of May, in the year of our Lord one thousand eight hundred and thirty-two, the said George J. F. Clarke, by his said attorney, brought and filed in the clerk's office aforesaid his replication; which said replication is in the words and figures following, to wit:

Superior Court for the Eastern District of Florida.

GEORGE J. F. CLARKE, complainant,
vs.
THE UNITED STATES, defendant.
} *In Chancery* 26,000 *acres.*

Replication of the above complainant to the answer of the United States, defendant.

Replication. This replicant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies in the

said answer, for replication thereto, saith that he will aver and prove his said bill to be certain, true, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this replicant; without that, that any other matter or thing whatever in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is, and will be, ready to aver and prove as this honorable court shall direct; and humbly prays, as in and by his said bill he hath already prayed.

J. B. LANCASTER,
Solicitor for Complainant.

Documents offered and received in evidence in this case on behalf of the said claimant, being translations made and certified by the translator and interpreter of this court, from copies furnished and duly certified by the keeper of the public archives for East Florida, to wit:

No. 1.

TRANSLATION.

Petition.—His Excellency the Governor.

Memorial of Clarke to Spanish Gov't for grant.

Don George Clarke, with great respect, to your excellency represents that, by the commissions and official documents that accompany this memorial, from his excellency the Marquis of Somerueios, and their excellencies the governors of this province, Don Henry White, Don Juan Jose de Estrada, Don Sebastian Kindelan, and your excellency, (which are ten documents that your petitioner requests may be returned to him) it is evidenced that, from the year eighteen hundred, your petitioner has been always employed in one or other service of Government, namely, as officer of militia; charge in relation to the timber of this province; to account to the custom house of their exports and imports; surveyor general of lands; charge of the plans, surveying, and distribution of the town of Fernandina from its first foundation to the present day; public interpreter and notary public there for many years; an officer aggregated to the militia of that place during the years of the revolution; charge of the census of the population of the country parts of the province; captain and local judge of the district of St. Marys, &c. &c., and at times employed in three or four several capacities at once, as is the case at this present day, without ever having enjoyed the pay of Government, nor other recompense for his long services, nor reimbursements of any part of the many disbursements that have been indispensable to the discharge of his duties, nor for the losses and misfortunes that he has suffered in point of property, particularly since the month of June of the present year, in which he has sustained a general sack of his effects in the town of Fernandina to the amount of thousands of dollars, since the pirates and insurgents under the command of General McGregor took possession of that place, which your petitioner abandoned as a sacrifice to king and country, constituting himself the watch and opposer of the measures of the enemy, and reporter thereof to your excellency; all which has been done at the expense of his pocket and risk of his life. His zeal, and the aid he contributed to the expedition that marched against those pirates, has occasioned the offer of a reward of one thousand dollars for his head, and five hundred each for those

of three of his sons. Some of those services are known to your excellency, and others are evidenced by documents existing in the secretary's office: Therefore, and in order to obtain some recompense and remuneration for sacrifices and losses that have grown out of his services and disbursements, and others which he omits because they are known to your excellency, and were directed to the good of the state and tranquillity of the province from the commencement of the insurrection of 1812, he petitions by virtue of his merits, and the wishes of our sovereign, that services should be rewarded, praying that your excellency will be pleased to grant him in absolute property twenty-six thousand acres of land in the following places: twenty-two thereof in the hammocks of Cuscoville and Chachala, situated to the west of the part of St. John's river where stood a store of the house of Panton, Leslie and Co., and about forty-five miles distant from it, and the four remaining at a vacant place called Yallahassasa, on the west of the river St Johns, and on the south of the road going from the place of a store formerly managed by John Hambly as agent for the said firm, and distant therefrom about twenty-eight miles, forming an oblong square bounded by vacant pine barren. These the petitioner solicits of your excellency's bountiful administration. St. Augustine, thirteenth of December, eighteen hundred and seventeen.

GEORGE J. F. CLARKE.

Grant to Clarke of 26,000 acres.

Decree.—St. Augustine, seventeenth of December, eighteen hundred and seventeen. Whereas, the services rendered by Don George Clarke are of public notoriety, and they are furthermore evident to me by the correspondence that has intervened in the periods to which he has reference, likewise by the documents that exist in the archives of the secretary's office of this Government, and those he has presented, which will be returned to him, and using the authority I exercise, and in the name of his Majesty and of his royal justice, which I administer, I grant to the aforesaid Don George Clarke, in absolute property, the twenty-six thousand acres of land in the places he solicits in this petition; and of which a title in form will be issued by the escrivano's office, where this instrument will be archived: this without injury to a third person.

COPPINGER.

No. 2.

TRANSLATION.

Royal title to 22,000 acres.

Title for 22,000 acres of land in favor of Don George Clarke, in the hammocks Cuscoville and Chachala.

Don Jose Coppinger, colonel of the royal armies, civil and military governor *pro tem.*, and chief of the royal domain in this city of St. Augustine, of Florida, and of the province thereof, for his Majesty:

Whereas in a roal order of the twenty-ninth of March, one thousand eight hundred and fifteen, his Majesty has been pleased to approve the bounties and rewards proposed by my predecessor, Brigadier Don Sebastian Kindelan, for the officers and soldiers, both of the regular and militia corps of this province, who contributed to the defence thereof in the time of rebellion, and one of the said favors consisting in the distribution of royal lands; and as Don George Clarke, lieutenant of militia, has represented to me the distinguished services which in person and money he has rendered in defence of this said province in different epochs of invasion, sacrificing and

abandoning his interests as a faithful subject ought, and as he has rendered himself deserving any reward by his zeal, love, and fidelity to his sovereign, which services extraordinary are well known to me, and are exhibited in his petition of the thirteenth of the present month, in virtue of which I have thought proper, by my decree of this day, to accede to his demand of a grant of twenty-two thousand acres of land in absolute property in the hammocks known under the names of Cuscoville and Chachala, situated west of the place of the river St. John, where there was a store of the house of Panton, Leslie & Co., and about forty-five miles from it, as it is all detailed more at large in the said petition and decree which exist in the archives of the present notary. Wherefore, and in attention to the said recommendable services, in accordance with the will of the sovereign, and with what the laws direct in reference to rewarding with distinction those who are entitled thereto, according to the quality of service rendered, and to the quality of those who render them, I have determined to grant, as in the name of his Majesty and of his royal justice, which I administer, I do grant, to the said Jorge Clarke the mentioned twenty-two thousand acres of land in the indicated place, without prejudice to a third party, for himself, his heirs and successors, in absolute property, and to issue to him, as I do hereby issue, the corresponding title, by which I divest the royal domain of the right and dominion which it had to the said tract; and I cede and transfer the same to the mentioned Don Jorge Clarke, his heirs and successors, in order that, in consequence thereof, they possess it as their own, use and enjoy it without any incumbrance whatever, with all its inlets, outlets, uses, customs, rights, and services which it has had, has, and which in fact and of right belong, or may relate to it, and in order that, if it is their will, they may sell, cede, transfer, and alienate it, as may best suit them. To the whole of which I interpose my authority as far as I can and of right ought, in virtue of the sovereign will. Given under my hand, and countersigned by the subscribed notary of the Government and of the royal domain, in this city of St. Augustine of Florida, on the seventeenth of December, one thousand eight hundred and seventeen.

JOSE COPPINGER.

By order of his Lordship:

JUAN DE ENTRALGO,
Notary of the Government and Royal Domain.

No. 3.

TRANSLATION.

Royal title to 4,000 acres.

Title of property to 4,000 acres of land in favor of Don George Clarke.

Don Jose Coppinger, colonel of the royal armies, civil and military governor and chief of the royal domain in this city of St. Augustine of Florida, and of the province thereof, for his Majesty:

Whereas, in a royal order of the twenty-ninth of March, one thousand eight hundred and fifteen, his Majesty has been pleased to approve the favors and rewards proposed by my predecessor, Brigadier Don Sabastian Kindelan, for the officers and soldiers, both of the regular and of the militia corps, and other individuals of this province who contributed to the defence thereof in time of rebellion, one of the said favors consisting in the distribution of royal lands; and as Don Jorge Clarke, lieutenant of the militia of this

city, has represented to me the distinguished services which he has rendered, both in person and money, in defence of this said province at different epochs of invasion, sacrificing and abandoning his private interests and property, as ought to do a faithful subject, and as he is deserving all recompense for his zeal, devotion, and fidelity to the sovereign, and as his services are well known to me, and exhibited in his memorial of the thirteenth of December, one thousand eight hundred and seventeen, in virtue thereof, I have thought proper, by my decree of the seventeenth of same month and year, to accede to his petition relative to the grant of four thousand acres of land in absolute property, in the place called *Yallahasassa*, on the west side of the river St. John, and south of the public road which runs from the place where has been a commercial establishment under the management of John Hambly, who was the agent of the house of Panton and Leslie, and about twenty-eight miles from it, the said tract forming an oblong square, bounded on its four sides by vacant pine land, as the whole is manifested more at large in the mentioned memorial and the decree which exist in the archives of the present notary: Therefore, and in attention to the said recommendable services, in accordance with the will of the sovereign, and with the provisions of the laws, ordering to reward with distinction those who are entitled thereto, due attention being paid to the nature of said services, and to the quality of those who render them, I have determined to grant, as in the name of his Majesty and of his royal justice, which I administer, I do grant to the aforesaid Don Jorge Clarke the mentioned four thousand acres of land in the indicated place, without prejudice to a third party, for himself, his heirs and successors, in absolute property; and to issue to him, as I do hereby issue, the corresponding title, by which I divest the royal domain of the right and dominion which it had to the said land; and I cede and transfer it to the aforesaid Don Jorge Clarke, his heirs and successors, in order that, in consequence thereof, they possess it as their own, use and enjoy it without any incumbrance whatever, with all their inlets, outlets, uses, customs, rights and services which it has had, has, and which in fact and of right appertain, and may relate thereto; and in order that, if it is their will, they may sell, cede, transfer and alienate it, as may best suit them. To the whole of which I interpose my authority as far as I can and of right ought, in virtue of what is herein exposed, and in virtue of the sovereign will. Given under my signature, and countersigned by the subscribed notary of the Government and of the royal domain, in this city of St. Augustine of Florida, on the fourth of May, one thousand eight hundred and eighteen.

JOSE COPPINGER.

By order of his Lordship:

JUAN DE ENTRALGO,
Notary of the Government and of the Royal Domain.

No. 4.

TRANSLATION.

His Excellency the Governor:

Petition for, & order of, survey.

Don Jorge Clarke, with the greatest respect, appears before your excellency, and states that he is the surveyor *pro tem.* appointed to survey the lands of the province: he ought not to survey his own land; which operation ought to be performed by another person whom your excellency may think proper to qualify therefor; and,

as Don Andres Burgevin is a person competent to the task, and as he has been in various cases employed in the same manner in the absence of your petitioner, with the permission of the superior authority, therefore, your petitioner supplicates your excellency to be pleased to permit that the said Burgevin survey and remit to him the plat of certain tracts of land granted to him by this Government, in conformity with the titles which your petitioner will exhibit to him. Which favor your petitioner hopes to receive from the justice of your excellency. St. Augustine of Florida, 20th of April, 1819.

JORGE J. F. CLARKE.

St. Augustine, 20th April, 1819. As he solicits, the acceptation and oath of Don Andres Burgevin being previously received, and the adjoining proprietors being summoned.

COPPINGER.

Before me,

JUAN DE ENTRALGO, *Not. of Gov't.*

In St. Augustine, on the same day, month, and year, I notified the preceding decree to Don Jorge Clarke; which I certify.

ENTRALGO.

On the said day, I notified to Don Andres Burgevin the appointment of surveyor conferred upon him; whereupon he said that he would accept, and did accept it, promising under his legal oath to exercise well and faithfully the functions of his commission; which I certify.

ANDRES BURGEVIN.

Before me,

JUAN DE ENTRALGO.

Here follows the annexed five plats and certificates, and numbered from one to five inclusive, being all (with the exception of No. 2,) copies of translations made by the translator of this court from the originals which are on file in my office, and No. 2, being a translation made by said translator from a copy furnished and duly certified by the keeper of the public archives for East Florida.

No. 1.

TRANSLATION.

I, Don Andres Burgevin, an inhabitant of St. Augustine, and the surveyor proposed by Don Jorge Clarke to survey his lands, and authorized by the Government to that effect, do certify that I have surveyed and delineated to Don Jorge Clarke two thousand acres of land in the hammock called Chachala, in Alachua Territory, in part of a larger quantity which was granted to him by the Government in absolute property, on the seventeenth of December, one thousand eight hundred and seventeen, which tract is conform in its circumstances to the following plat; and, in testimony thereof, I give the present in St. Augustine of Florida, 10th June, 1819.

ANDRES BURGEVIN.

No. 2.

TRANSLATION.

I, Don Andres Burgevin, an inhabitant of this city, and the surveyor proposed by Don Jorge Clarke, and qualified by the Government on the 20th April, 1819, for the survey of his lands, do certify that I have surveyed and delineated to the said Don Jorge Clarke twenty thousand acres of land in the Territory of Alachua, and at a place called Chachala, west of the river St. Johns, and about forty-five miles distant from it, in part of a larger quantity which were granted to him with the title of property on the 17th December, 1817; and said tract appears in its circumstances conform to the following plat, and to the original thereof deposited in the secretary's office of the Government; and, in testimony thereof, I give the present, which I sign in St. Augustine of Florida, 2d August, 1819.

ANDREW BURGEVIN.

No. 3.

TRANSLATION.

I, Don Andres Burgevin, an inhabitant of this city, and appointed to survey the lands of Don Jorge Clarke, do certify that I have surveyed and delineated for Don Jorge Clarke one thousand and five hundred acres of land in the place called Yallahassasa, on the road leading from the river St. Johns to Alachua, in part of a larger quantity which was granted to him by the Government on the seventeenth December, one thousand eight hundred and seventeen: said tract is conform to the following plat, and to the copy thereof deposited in the Secretary's office of the Government. St. Augustine of Florida, 28th January, 1820.

ANDRES BURGEVIN.

No. 4.

TRANSLATION.

I, Don Andres Burgevin, an inhabitant of the city of St. Augustine, and appointed surveyor to survey the lands of Don Jorge Clarke, do certify that I have surveyed and delineated for Don Jorge Clarke one thousand five hundred acres of land on the road to Alachua from the river St. John, at a place called Yallahassasa, in part of a greater quantity which was granted to him by the Government on the seventeenth of December, one thousand eight hundred and seventeen: said tract is conform to the following plat, and to the copy thereof deposited in the secretary's office of the Government. St. Augustine of Florida, 4th February, 1820.

ANDREW BURGEVIN.

No. 5.

TRANSLATION.

I, Don Andres Burgevin, an inhabitant of St. Augustine, and appointed surveyor by the Government to survey the lands of Don Jorge Clarke, do certify that I have surveyed and delineated for Don Jorge Clarke one thousand acres of land at a place called Yallahassasa, in part of a greater quantity which was granted to him on the seventeenth of December, one thousand eight hundred and seventeen: said tract is conform to the following plat, and to the copy thereof deposited in the secretary's office of the Government. St. Augustine, 6th of February, 1820.

ANDREW BURGEVIN.

And afterwards, to wit: On the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and thirty-two, the following agreement between the counsel for the parties in this cause was filed in this cause, to wit:

GEORGE J. F. CLARKE, *vs.* THE UNITED STATES. } *Claim for* 26,000 *acres.*

Admission as to part of this g'nt being within Alachua grant.

It is admitted that Chachala, called for in this grant, is within the large grant to F. M Arredondo and Son; and that Yallahassasa lies about twenty-eight miles from St. John's river, and west of a place thereon called Palatki; and agreed that all evidence given in the case of Arredondo and Son, touching the question of Indian boundary, so far as the same is competent and relative to this case; as, also, the testimony taken in the case of Domingo Fernandez for 16,000 acres, upon the same question; subject to all legal objections, if the case should be taken up to the Supreme Court upon that question.

J. B. LANCASTER, *for Compl't.*
THOS. DOUGLASS, *U. S. Att'y.*

SUPERIOR COURT, *East Florida.*

GEORGE J. F. CLARKE, *vs.* THE UNITED STATES. } *Land claim* 26,000 *acres.*

The testimony which follows is part of that which was taken in the case of F. M. Arredondo and Son vs. the United States, and by the agreement of the parties in this case, of the 24th May, 1832, to be received in evidence in this case.

Offered by the counsel for the claimant, as follows, to wit:

Joseph M. Hernandez's testimony.

Jos. M. Hernandez's testimony.

Witness states that, subsequently to the year 1812, the Seminole Indians abandoned that country, then known as the Alachua, as nearly as I can recollect, but cannot be certain as to the particular time, but think it was some time in the year 1813 or 1814. The witness further states that these Indians have not, within his knowledge, since that time returned to the Alachua country, as he has never understood that they have so returned; and that it has been the general understanding of the community that they have not so returned, that is, to make that country their residence, or place of abode, as it formerly was.

Examined by U. S. Attorneys.

Witness states: I never was in the Alachua district before 1813 or 14, the time mentioned above, or indeed before the change of Government in 1821. The witness further states that he has understood and supposed that Alachua was a district of country, the extent of which was not particularly known to him; he is not able to say that the name of that district was derived from a lake called Alachua. Witness states that, subsequently to 1812, several armed parties at several times, as he has understood, made incursions into the Alachua country against the Indians, and that he has also understood that the Indians abandoned the Alachua country on account of

these incursions. The witness says that he cannot say that they were driven from the country on account of these incursions and actual force, but is inclined to think that they left it for the purpose of obtaining a position more protected than one so close on the frontier. The witness states that, after the disturbance in 1812, a period of quiet, immediately on the removal of the United States' troops from the province, took place, and continued for a number of months; but again, in the course of the year 1813, straggling parties, without any particular head, as the witness understands, were disturbing the country in the interior, west of the river St. Johns, and about the Alachua. This state of things continued for some time, and when it ceased witness cannot precisely state; but, previous to the occupation of the town of Fernandina, about the close of the year 1817, as witness thinks, a period of quiet of ten or twelve months had happened, which was again disturbed in the neighborhood of Amelia island, by that occupation, but the country generally continued quiet till it was entered by the United Strtes' troops in 1818. The witness further states that the Indians, when they left the Alachua as above stated, have been understood by him to have gone in a southerly direction, to a place which he believes is called Pa-lak-li-ka-ha;—as to the precise distance he cannot state, and does not recollect that he has ever heard, but understood it was a considerable distance. The witness again states, that he has never understood that any Indians were residing at Alachua about the time of the transfer of this country to the United States, or at any time just previous thereto, or since the abandonment of the Alachua, already spoken of by the witness.

The witness states, in reply to an inquiry by the court, that the straggling parties which he has spoken of in his testimony, as he understands, were altogether unauthorized, and not acting by the order of any Government. He also states that the Indians, while they resided at Alachua, before their abandonment of it in 1813 or 14, were in possession of villages and cultivated grounds, and cattle and horses: and he means to state in his testimony that he has understood that they have never returned to the re-occupation of these villages, or the cultivation of these grounds, it being considered, as witness understands, an unsafe place for the grazing of their cattle and horses.

Witness states, in answer to an inquiry by counsel of the United States, that he has understood that many horses were destroyed belonging to the Indians, by the parties who invaded the country from time to time.

Witness examined by claimants.

Witness states that this is his native place: that it has been his constant place of residence since 1811: that here he has had the same opportunity to know the usages and practice of the Government of Spain in regard to East Florida, as have been possessed by other residents here: that he resided in the city of Havana about five years immediately preceding 1811, which has given him some opportunity to know of the usages and mode of administering the Government there.

Question by counsel for claimant. Have you ever known a grant of a governor or intendant disapproved by the King?

The witness replies, that he never has known such grant disapproved of.

Question by counsel for claimant. Was it not understood as the practice and usage of the Government of Spain to dismiss or censure an officer who exceeded his authority, but not to vacant the grant given?

The witness replies, that it has been always understood here, that he believes that it is so understood by the inhabitants of Cuba, and probably throughout the Spanish dominions, that the acts of the governments, in cases where the interests of the crown are alone affected, are guaranteed to the subject, and the governors alone are answerable to the King, if they have exceeded their authority; and that the interest derived by the subject, by virtue of such act, is not vacated, taken from him, or permitted to suffer.

Question by counsel for claimants. When a title in form, *a titulo de propriedad*, as it is called, was given, was it not considered by the grantees as absolute and indefeasible, and was it not so respected by the Spanish authorities?

Witness replies, it was.

Question by counsel for claimants. When a title in form was given to a Spanish subject, and a condition annexed, was it not understood to be the practice and usage of the Spanish Government to call on the grantee, by inquest or other proceeding, to fulfil the condition, and, if cause was shown, would not the Government allow a further time for its performance?

Witness replies, that it was not the practice, as he understands, for the Government to call on the grantee to show cause why he had not performed the conditions of his grant, and that a grant, by reason of the non-performance of the conditions attached to it, within the time stipulated, would of course become void; but it was understood generally that further time would be given for the performance of the condition, upon the grantee showing good and reasonable excuse for the non-performance of the conditions within the time limited.

The counsel for the United States excepted to the three preceding questions as being incompetent and irrelevant; which objection was overruled by the court, and the answers ordered to be taken.

Question by counsel for claimant. Was the Spanish Government able to afford protection to settlers in the years 1818, 19, and 20, in the Alachua?

Witness replies, I do not think they were.

Question by counsel for claimants. Did not this inability arise from the recent circumstances of the Spanish nation?

Witness replies, yes, and war with France, since the year 1808 up to 1820, from which resulted the inability of Spain to protect her colonies. The witness adds, that the inability of the Spanish Government has continued and increased up to the present time.

Witness examined by counsel for United States.

The witness states that Fernando M. Arredondo and Son, the original grantees of the Alachua tract, were Spanish subjects, and Spaniards by birth and descent. Witness further states that he cannot say precisely when Fernando M. Arredondo, the father, left this Territory: he left this country as its representative at the provincial junta held at Havana, for the purpose of electing its representative to the Cortes of Spain, and has not since returned to Florida. F. M. Arredondo, the son, left here sometime previously to the change of flags, but the witness thinks after the father left the province. The father has remained an inhabitant of Havana till this time. I believe Jos. Arredondo, the son, has been twice in this country since the change of flags, and when he last left here was lost in the schooner Florida, in 1825, on returning to Cuba, to his residence in Cuba.

Question by counsel for claimants. Would it not have been impossible to bring 200 Spanish families here after the treaty with Spain?

Witness replies that it would have been somewhat difficult, but cannot say that it would have been impossible: but Spaniards and Catholics prefer to remain in their own, or, if they emigrate, to Spanish colonies. Witness further states, that he has not understood that the laws of Spain, or the regulations of the crown, prohibit Spanish subjects from emigrating to Protestant countries; but he has understood, from general report, that, sometime between 1800 and 1805, a Spanish sloop of war was sent by the Spanish Government to Baltimore to take from that place a number of Spanish youths at school or college there. Witness further states that a large number of the Spanish families have left this country and gone to Cuba since the change of flags, and principally immediately after the change. I know that some of the inhabitants of Louisiana left that country after the transfer to the United States: cannot say what number.

Question by counsel for the United States.

Witness answers that, by the inhabitants of this country, that he does not mean the military who belongs to the garrison, but he meant those who were citizens of the place, and some of them were connected with the military, and some few others perhaps held civil offices.

Examined by counsel for claimants.

Witness states that, during his residence in this country, during the Spanish Government, he never heard of any boundary between the Indians and that Government. Witness states that Governor White conducted himself in his official capacity more as a military man than as a civilian. Witness does not believe that he condescended to give explanations for any of his official acts, except to his superiors, to whom it is presumed he was full and explanatory. Witness states, that he believes it has been usual for the Government of Cuba to make large grants of lands, not only for Cuba, but for Florida also. In making them, witness believes they take into consideration the grantee's condition in life, and his ability also to improve the lands granted: services rendered by him are also considered. The witness states further, that the practice of holding lands in Cuba on tribute, or the payment of the lawful interest on the stipulated value of the lands, has emanated from the making of these large grants, and this practice of holding lands in Cuba is very extensive; the persons so holding the lands take them, as witness believes, from the Government grantee on the condition of paying to him this annual tribute, but are not bound ever to pay the principal, but may do so if they think proper.

Examined by counsel for U. S.

Witness states that he personally knew Governor White, and had known him from his childhood till he left this place, in 1802, at the age of 15, to go to Savannah to school; that witness returned to this place again in about two years; left it again in 1805, and returned again in 1810, when he had an opportunity of again seeing the governor. Witness went again, in 1810, to the United States, and to Cuba, and again returning in 1811, found that Governor White had died in his absence. Witness states that he formed his opinion of the manner of Governor White in transacting official business, from his own observation, and from the general character which was borne by him. Witness states that Governor White was esteemed a very honest man, and remarkably strict and rigid in the discharge of his duties. Witness states, that he is under an impression that any special rules and regulations upon which lands are to be granted by the officers of Government

are published ordinarily in the Government Gazette, or in some other public manner, but he believes, at the same time, that they act discretionally, reporting their acts to the crown. Witness states that he means to be understood that the governor, or public authorities, report their acts to the crown in cases where, in their discretion, they have thought it their duty to go contrary to the laws or ordinances of the crown; for instance, the witness states that Governor Estrada exchanged 4,000 or 4,500 acres of land for a vessel with Mr. Russel This act, witness understands, was contrary to the ordinances which prohibited or did not allow the sale of lands; but this act was reported by Estrada to the crown, and was approved of, but it was directed that the approval should not be considered as a precedent for future acts of like kind. Witness thinks the large grants of which he has spoken, as having been made in Cuba, were made many years ago: the grantees of these large grants are some of them in possession of large stocks of negroes. The witness states that, of these large grants to which he particularly has referred in his testimony, some of the grantees may be dead and others alive —does not particularly know. He further states, that grants have been lately made in Cuba, but whether in large or small grants he is not able to say. Witness says that, from 1816 to 1821, the time of the exchange of flags, that a small number of families could not safely have settled in Alachua: that two hundred families might have maintained themselves, and would have been safe there.

All the evidence relating to the practice of the Government of Cuba is excepted to by the counsel of the United States as inapplicable, irrelevant, and foreign to the issue.

Antonio Alvarez's testimony.

Testimony of Antonio Alvarez

Witness stated that he first entered into an office of the Spanish Government in the year 1807, as clerk of the Government secretary of this province; that he remained as such till December, 1808, when witness went to Havana, and remained there till June, 1810, at which time he again returned to this place, when he resumed the station of clerk in the same office mentioned above—quit that office again in 1814; in August, 1815, the witness was appointed by the King chief clerk of the office, the duties of which he performed till the change of Government. In this office, in which witness was chief clerk, all concessions of lands were made; the royal title or absolute grant proceeded from the Escribano's office, which was distinct from the secretary's. Witness states that the secretary's office, where he acted as clerk as aforesaid, was the office where the governor personally attended and transacted his duties, except such as were of a judicial character. Witness states that, during the whole time he was in the secretary's office as above stated, he never saw nor heard of a map marking upon it any Indian boundary or limit. Witness says that he never heard, either in the office or elsewhere, of any such boundary as existing—he never heard of it at all, so far as he recollects, till since the change of Government. Witness says that Governor White was very precise in his mode of doing business—he did it without many words: when he made an order it was made without explanation, or at least very seldom with explanation, and was carried into execution in the same way.

Cross-examined by counsel for U. S.

Witness states that he considered Governor White a correct officer—very strict; he does not mean to distinguish between one governor and another,

as to which was most correct and upright in his motives—he means only to speak of their mode and manner of doing business: some would refuse a grant or petition, or comply with an application in a courteous manner, and by explaining the reason for not doing so to the applicant; but Governor White was very precise or short in his manner, and when he refused, would frequently say to the applicant, that "I won't, because I won't," which was his favorite expression. Witness states that he is interested in a grant, being sole grantee of the Government, of a tract of land lying, as he supposes, in the Big hammock, which witness understands to be situated south and west of Black creek and the St. Johns. Witness understands it lies about forty miles west of the St. Johns. Witness believes that it lies two or three miles from the head of the Ocklawaha; the grant contains fifteen hundred acres—was made by Governor Coppinger in 1817. Witness states that he had never heard before the exchange of Governments of any settlements of White's west of the St. Johns, in the direction of his grant. Governor Coppinger arrived here on the 5th and 6th of February, 1816, and immediately assumed the government of the province. Witness states that, previous to the arrival of Governor Coppinger, the Indians were understood to live in he country west of the St. Johns. Witness did not understand there were any immediately on the St. Johns. Witness states he never heard of any Indian boundary as existing between the Indians and the British, when this province belonged to Great Britain, till since the country came under the government of the United States. Witness states that, after the revolution, and disturbances in this country in 1812 and '13, and during these years, and also in 1814, he had heard, from the common report, of parties from Georgia going into the Alachua country to steal cattle, and of disturbances between them and the Indians; that, during the years 1815, '16, and '17, he heard of no disturbances of this kind in that country, but he heard that a family was murdered by the Indians, who were inhabitants of the province, but not Spanish people, living, he believes, between the St. Marys and St. John's rivers; but that he knew of no difficulty or disturbances during any part of this time between the Spanish people and the Indians, or between the Spanish Government and the Indians.

Witness examined by claimant.

Witness states that his claim to this grant was recommended to Congress for confirmation; but, by some mistake, was not included in the report of the commissioners to the Secretary of the Treasury.

Examined by counsel for U. S.

Witness states that he is positive he has never seen a treaty held between the British and Indians at Picolata.

By counsel for claimants.

Witness states that, if such treaty had have been made in the office of which he was clerk, he should have seen it: there is no such treaty in the office of the public archives of which witness is keeper. Witness further states, that the office of the secretary was the proper place for the deposite of such treaty, if it had been in the possession of the Spanish Government.

By counsel for the U. S.

Witness states that he formerly saw in the office of the secretary some few British documents: he believes all that he saw in that office are now on

file in the office of the archives, and he believes they relate to the sale of some lots of land.

By counsel for claimants.

Witness states that Pedro Miranda has been absent from this country, in Cuba, about two years.

The witness also deposeth and saith that this deponent acted as chief clerk to Governor Coppinger, and was present at a talk held between the said governor and some Indian chiefs shortly after the establishment made by Mr. Wanton on the Alachua; that the chiefs complained that white men had settled at the Alachua. The Governor replied that they were sent there by Mr. Arredondo, with his (Governor Coppinger's) permission, in consequence of Mr. Arredondo having obtained a grant of the land from a person having more power, or a greater man than himself, meaning thereby the superintendent of the island of Cuba and both Floridas. The Indian chiefs said, in substance, they were satisfied, and would comply with the governor's request, and not molest or disturb the white men. And this deponent further saith, that this talk was carried on with the usual formalities observed on such occasions, the King's interpreter, Antonio Huertas, being present and interpreting. And this deponent further saith, that the Indians have abandoned the Alachua ever since the year one thousand eight hundred and thirteen, since that time having no regular settlements on those lands. This information is obtained by means of the office of chief clerk to the governor, and not from this deponent's having actually been on the lands.

Documents and testimony offered, taken, or received in evidence in this case, on the part of the United States, and filed herein, to wit:

No. 1.

THE UNITED STATES, *ads.* GEORGE J. F. CLARKE. } *Land claim* 26,000 *acres.*

The following documents are copies of translations offered in evidence on the part of the United States in the case of Domingo Fernandez vs. the United States, and objected to by the counsel for the claimant in that case, and objection overruled by the court: and, by the agreement between the parties in this case, of the 24th May, 1832, offered in evidence on the part of the United States in this case, as follows, to wit:

No. 1.

TRANSLATION.

Letter from capt. gen'l of Cuba to gov'r of Florida.

I apprehend all which your lordship expresses in your two official notes of the 12th and 16th of August last, No. 580 and 581; and as to what relates to the displeasure which Payne's brother have manifested at the entrance into the bay of Tampa of a vessel of ours with an officer, it does not agree with the favorable dispositions which the nation has manifested in the same bay towards the officer and the captains of the two schooners which afterwards established themselves there at the request of your lordship, as all the Indians who repaired to the vicinity of Tampa, not only appeared to be well pleased during the residence in that bay of the officer whom I commissioned to examine it, but also constantly expressed their wish that he should return,

eagerly inquiring of the captains who are there at present, when he would realize his return, which he offered to them, according to the assurances of the two skippers, witnesses, who themselves have received from the Indians the most friendly treatment. The particular being untrue, that they have refused provisions to Captain Pesse, whom I suppose to be Captain José Bermudez, who happened to be in this city when I received the official communication of your lordship, No. 580, and who assured me that he did not receive such a denial from the Indians, neither did he perceive any thing extraordinary in their demeanor. Such contradictory conduct ought not to cause any surprise on the part of the Indians, as it is always directed to the purpose of obtaining gifts, and adapting their speeches to their object: they would appear complaining in order to find your lordship more disposed to satisfy them with bounties. But, on the question of forming or not forming an establishment in that bay, I would wish that your lordship had answered that if such an establishment had not been effected, it might be because it would not have been convenient to make one until now, inasmuch as whenever the King sees fit to do so, in that or any other bay, there can be no obstacle to his using his incontestible right, because the same nations, by formal treaties, did cede all the land on the coast until the points where the salt water reaches, to the King of England, who was then in possession of the two Floridas, which have been transfered to the dominion of the King of Spain, with all the rights which the King of England had. Your lordship knows those treaties, and it is necessary that those points be frequently repeated to Indian chiefs, as well as some points contained in the treaty of Pensacola, to the Indians, whose public right is traditional; and, as they have no knowledge of writing, the treaties which they would not see carried into effect would be effaced from their memory, and they would only recollect the article of gifts and others which interest them, and which they have frequently in sight; therefore, I recommend to your lordship that you and your subalterns press those points on the Indians whenever an opportunity to do so is offered, in order that they become familiarized with them, and in order that they habituate themselves to consider as ours all the territory of the coast, and all the harbors it contains.

May God have you in his holy keeping for many years. Havana, 6th October, 1794.

LUIS DE LAS CASAS.

His Excellency the GOVERNOR OF FLORIDA.

No. 2.

TRANSLATION.

Gov'r of Florida to captain gen'l of Cuba.

MOST EXCELLENT SIR: Under date of 24th of January last, No. 97, I informed your excellency of the necessity of apprehending an individual named Diego Allen, who apparently suspected my intention, and more probably be conscious of his delinquency, retired when I was about laying hold of him, to a place which is doubted whether it belongs to us, or whether it is one of those parts which the Indians call theirs.

The fact of the savages having located themselves on the eastern side of the river St. John, and even in the vicinity of the river Musquito; and particularly the subsisting encroachment of the adventurer Bowles, together with the circumstances that, from the beginning of this present month, the

Indians and Americans have concurred to determine the dividing line of their respective possessions, in conformity to the treaty entered into in the year last past, in New York, between the President of the United States and the mongrel, Alexander McGillivray; and also the royal determination to promote the colonization of this province, render it essentially necessary that we also proceed to the regulation of our boundaries with the Indians, taking as a basis that all the lands ceded by them to the English in the two Floridas, correspond at this day to Spain; and that we convoke to that effect the said mongrel, and a competent number of the Indian chiefs, in the place, and with the presence of such persons as your excellency will judge convenient. May God preserve your excellency many years. St. Augustine of Florida, 6th of September, 1791.

His Excellency Don LUIS DE LAS CASAS.

No. 3.

TRANSLATION.

Governor of Florida to captain general of Cuba.

Most excellent Sir: In answer to the letter of your excellency of the third of the month last past, I say that, by the most probable information which I have been able to acquire, it appears that the place which the Englishman, Sarles Lewis, inhabits, is not the Gega which your excellency mentions in your letter of the 8th of November. Said river, if such a name can be given to stagnant waters which have no outlet to the sea, except very seldom, and when this happens, it is only in consequence of excessive freshets, is distant about sixteen leagues south of Indian river, and that on which resides the Englishman is called new river, at the mouth of which was seen, in November last, the sloop which is alluded to in my official communication, No. 302, of the 26th September preceding.

In relation also of the inquiry which your excellency has been pleased to make, whether the settlement of Lewis is situated within the territory appertaining to the King, I have to say that, by the regulation of boundaries agreed upon between the British and the Indians in the year '65, and I apprehend that the same agreement ought to govern us, it appears that the latter, besides the territory between the sea and the land formed by the river St. John, and also the lands between that and St. Mary's river, ceded to the former, throughout the whole circuit of the peninsula; the lands on the coast, as far as the tide reaches, that is to say, as far up the rivers as where fresh water mix with those of the sea; and, from the information I received, the Englishman resides still farther in the interior, as his habitation is fifteen miles distant from the sea, and salt waters do not extend more than ten, and, at most, eleven miles from the sea coast in that place; but, on the other side, it appears that said settlement is situated in the territory of his Majesty, as, according to the topographical plat which I have, it is comprehended within the said bend, between the sea and Mayaco lake, which undoubtedly forms a part of the river St. Johns; and there is an old tradition, and the English entertained the same opinion, that the waters of the said lake communicate with the Mexican gulf in the bay of Juan Ponce de Leon.

In reference to the impression which the arrest of Sarles might make on the Indians, I think that his intimate friends would resent it at first, but

they would gradually cool, as it happened when Bowles was arrested, who undoubtedly had infinitely more influence than Lewis has with them. After all, it might be convenient to treat of this particular with the chiefs of the nation, who, if some gifts were made, would be apt to offer themselves to deliver him up.

I am meditating to expedite a vessel with some people I could depend upon, ex professo, to ascertain satisfactorily the residence and circumstances of the said Englishman, under the pretence of taking in water, and hunting for deer and turkeys, but without molesting him in the least, until I receive further resolutions from your excellency.

May God preserve your excellency many years. St. Augustine of Florida, 13th January, 1793.

Most excellent Sir Don LUIS DE LAS CASAS.

No. 4.

TRANSLATION.

Gov'r of Florida to captain gen'l of Cuba.

MOST EXCELLENT SIR: The annexed copy will inform your excellency of what has occurred with the Indians, and of the cause of the detention of this official communication: notwithstanding I am anxious that they should be remitted promptly, every thing is disposed to ———.

The two brothers of Payne did actually arrive here on the 14th, in the morning; they got drunk immediately, and until yesterday evening they were unable to speak. I have conversed with them leisurely, and seriously charged them with their remissness in reciprocating our friendship, with the ill-timed occurrence of the detention of the packets, &c.; and I concluded with threatening them that, in case they would not give me satisfaction, by way of retaliation they would not meet here in future the good treatment, the welcome, and gifts they had experienced until now.

They endeavored to satisfy me by stating that their brother was sorry for what had happened, and which had been occasioned by two old men, who were persuaded, by reports current among them, that the mission of the man I sent was solely to explore the land, with a view, on the part of the Spaniards, to erect a fortress, and take possession of that part of the country; to which effect they had sent last year to reconnoitre the said district. I persuaded them of their error, and that, in case such an attempt were made, it would be made with a view to put there a store in order to facilitate the trade which they wished so much to establish, and not with the view of usurpating the lands, which we have in abundance, and it would be always with their knowledge: whereupon they offered various arguments, which I found some difficulty in rebutting, because, in truth, I had no knowledge of the intentions of the superior Government in sending to Tampa the vessel and the officer of whom they complain, and wished not to incur the danger of contradiction; and endeavored to extricate myself from the difficulty by telling them that when they hear similar reports they have only to inquire of me the origin of them, and I would always tell them the truth, with which they were satisfied; and they concluded in saying, that, although the establishment of a store in that place would accommodate them, yet as many people and much cattle would be connected with it, as is the case with the Apalachie store, it would occupy much of their hunting ground, and this would be inconvenient to them.

Finally, they manifested much sorrow for the prejudice which had been occasioned by the return of the packets, desiring that I should remit the same again, and offering to give me an Indian upon whom I could depend, who would accompany the bearer, and promising that they would duly arrive as well as any other that I might wish to send: I embraced the offer as it is the most expeditious way, and as it is important that these acts be not lost, nor the little book which I send with a confidential note, and of which I have no duplicate, and because the departure of Dominick will be still delayed, and because this season renders such a voyage laborious; but I believe that, in future, it will be well to dispense with this course, at least from mid October forward, which is the season of northers and of short voyages, as I observe in the Indians a degree of irresolution and mistrust which did not exist before, and I know not whether it is occasioned by the influence of Seagrove, or by the introduction among them of General Clarke, whose designs are spoken of in a various manner, or whether I ought to attribute it to some other cause, time and the return of my commissioner Hambly, who should have been here before this time, will bring some discoveries to us. After all, it appears to me that your excellency may use the same mode of conveyance to send me your answers, and, as soon as I receive other intelligence, I will advise whether the two schooners ought to retire from there. This is my view of the matter, but your excellency will judge of what is most convenient to do for the service of the King.

May God preserve you many years. St. Augustine of Florida, 16th of August, 1794.

Most Excellent Sir DON LUIS DE LAS CASAS.

No. 5.

TRANSLATION.

The Governor of Florida gives information of the return of the packets which had been forwarded by way of Tampa, and announces that they will be sent again by the same way, as soon as possible, or by sea in the first safe vessel.

Governor of Florida to captain general of Cuba.

Most excellent Sir: The total want of repairs of this schooner as I report in my preceding official note, which your excellency will receive with this, has delayed her departure, from day to day, until this date, and has given time for the return of the man who arrived hereyesterday night, and whom I have sent to Tampa with the interesting packets which I have also mentioned, that is to say, the original cause of the American prizes, &c.

The cause of this return has been this: on arriving with his commission as far as the village contiguous to the said bay, the man who was the bearer was not permitted by the Indians to go farther, notwithstanding his entreaties, and the mention he made of the importance of the papers. They founded their denial on the knowledge they had that an officer had been there some months ago to reconnoitre the land in order to erect a fort, and that is not a sign that we wish to keep peace with them: they said that if their chiefs had not been absent on their hunting parties when Don Juan McQueen came through that road, they would have caused him to retrograde, and

they would have treated in the same manner the interpreter Don Antonio Huertas, when I sent him with other packages, to which they added that, a few days ago, the Captain Pese, of the vessels which are in Tampa, had been in their town soliciting provisions which they refused, and they ordered him to go back to his vessel, and never return again; because they would not permit, in any manner whatever, that any body should travel from the coast here, and from here to the coast.

To-day or to-morrow I expect the brothers of the Indian Payne, whom this carrier left on the road: I will endeavor to find out the origin of this occurrence, and if he assures me that there is no malice in it, and I suspect some, and if he is willing to accompany the bearer, I will forward the said papers again by the same road: otherwise they will be carried by Don Domingo Martinely, captain of the sloop which is getting ready. It is a good vessel and the captain is a very active and good pilot: it may be that I obtain their escape, which will be very fortunate, considering the great number of privateers.

I avail myself of this opportunity with the sole view of communicating this occurrence to your excellency in case it happens that this little schooner arrives in safety.

May God preserve your excellency many years. St. Augustine of Florida, 12th August, 1794.

Most Excellent Sir, Don Luis de las Casas.

No. 2.

Superior Court, *East Florida.*

The United States, *ads.* George J. F. Clarke. } *Land claim* 26,000 *acres.*

The testimony which follows is part of that which was taken in the examination of witnesses sworn on behalf of the United States, in the case of F. M. Arredondo and Son vs. the United States, and by the agreement of the parties in this case of the 24th May, 1832, to be received in evidence in this case. Examination in chief offered by United States' attorney, and cross-examination by counsel for claimant, as follows, to wit:

James Hall's testimony.

Testimony of Jas. Hall.

Witness states that he has resided in East Florida thirty-two years next March; that he has generally understood that there was a boundary established between the British Government and the Indians by treaty, but with respect to that boundary, as to where it can be found, he knows nothing, except what he has heard from Mr. Cohen; and he cannot say that any thing was said to him by Mr. Cohen on that subject till since the transfer of the country. Witness states that he has lived at the place which he now occupies on the St. John's river, about ten or twelve miles above the Cowford, and fifteen or sixteen miles below the mouth of Black creek, on the east side of the river, twenty-one years. Witness states that, previous to 1812, the Indians had possession of the country to the west of the St. Johns and south of Black creek, but that, in 1812, the country was invaded by an armed force from Georgia, headed by

Colonel Nunin, and subsequently, early in 1813, by a body of troops belonging to the United States, commanded by Colonel Smith of the American army. The Indians were broken up by these invasions, and left the district of country spoken of The witness says that, by the country of which he speaks, he means the Alachua country—its boundary he did not know, but he understood the Indians lived in it, and were driven out, as stated upon, in 1812 and '13, and he did not understand that they returned to the country again till after the invasion of Florida, in 1818, by the troops under the command of General Jackson. After they were broken up at Negro fort, the witness has understood that some of them came back again to the eastward, and he understood that a few of them fixed themselves in Alachua country again, in the Black hammock, but principally settled in the woods, near to Dexter's, at a place called Volusia, on the east side of St. John's river; they were in fact scattered over the country even to St. Augustine. Subsequently to the invasion of this country by the party under Colonel Smith, as the witness thinks in 1816, it might have been in 1815, the country was again invaded by a party under the command of a person called General Harris from Georgia. This party was made up of people, some few of whom belonged to Florda, but principally from Georgia: General Harris was killed in the country at this time, 1816, by a small party of Indians, consisting of three or four, and one negro. The witness states that, between the time of the invasion of the country by Colonel Smith up to the time of the death of General Harris, it had been disturbed by repeated marauding and plundering parties, who stole the cattle and horses belonging to the Indians, and carried them off, and sold them. The witness also states that, previous to 1812 and '13, the Indians were possessed of very large stocks of cattle and horses: a few of them, as he was told by the Indians themselves, owned stocks consisting of one or two thousand, and Bowlegs' sister of upwards of two thousand. Witness has understood that Harris's party, soon after his death, left the country; and as witness has understood the reason was, because they could not get supplies of provisions. Witness states that he considers that it would have been dangerous for any white man to have gone into the Alachua country, subsequent to Harris's death, till after the exchange of flags.

Cross-examined by counsel for claimant.

Witness states that he understood all the Indians at the Micasooky towns, and at the Sawannee, by the invasion of General Jackson, were driven to the eastward and southward, across the Sawannee, and these Indians were dispersed through the country. Witness states that he thinks it would have been dangerous for Spanish people, at the time spoken of in his testimony above, to have gone and settled in the Alachua, but not as dangerous by any means as for Americans, as there was a better understanding between the Spaniards and the Indians than between the Americans and the Indians. The witness states that the Floridians who joined Harris's expedition were considered by the Spanish Government as outlaws, and would have been so treated if the Government could have got hold of them. Witness states that he supposes Black hammock, spoken of by him in his testimony, is the same as Big hammock, or Big swamp, and lying westwardly and southwardly from Dexter's place, so called, at Volusia.

Jacob Summerall's testimony.

Testimony of Jacob Summerall.

Witness states: I am a native of East Florida, and have lived on the St. Johns, the St. Marys, and now live in the Alachua country, near the natural bridge of the Santa Fe, where I have lived for the last five years. I have always lived in East Florida, except about two years in Georgia, believes in 1815 and 16: was in Florida occasionally during these two years, but Georgia was my home. That it was in the latter part of 1812, or the beginning of 1813, Colonel Nunin went into the Alachua country with a party of armed men under his command; the party exceeded a hundred in number, perhaps there were one hundred and forty. Witness belonged to the party, but was taken sick at Kingley's plantation, called Laurel grove, on the St. Johns, and did not accompany the party beyond that place. Witness knows that a party of American troops, under the command of Colonel Smith of the army, and Colonel Williams of Tennessee, who commanded the Tennessee troops, about two hundred in number, the whole command being stated at about five hundred, also went into the Alachua country sometime in 1813, after Nunin's invasion. Witness cannot state the precise time. Witness was at this time of the party: acted as pilot for the United States' army. This party destroyed the Indians, and their villages, and their corn, and every thing else they could get hold of; burnt every thing up that would burn, including their corn, except what the party wanted for their own consumption. The principal villages destroyed at this time were one near the Alachua prairie, another about twelve miles southwestwardly at the Wacahootey—this was Bowleg's town; and another between these villages, south of Alachua prairie: there were other small villages destroyed in other places. The witness says that their villages were destroyed, and their horses and cattle, in the power of the party to collect, were taken and driven away from the country by the party, and hogs were killed that could not be brought away, merely to destroy them. Witness thinks, that in the early part of 1814, a party under the command of a person called General Buckner Harris also invaded the Alachua country: the witness cannot state the number of which this party consisted; thinks it exceeded a hundred. It was composed of persons called patriots, from the United States, and some of them from Florida. General Harris made his first stand, and built a block-house, at the east end of the Alachua prairie. He did not stay there himself, though he was frequently there, but had gone off to another place to settle a plantation, where he was killed. During the stay of this party in Alachua, (it left towards the latter part of 1814,) parties of Indians were still ranging the country, and witness has been told that a settlement remained, not broken up during all this time, at the junction of the Itchetuckne with the Santa Fe. The witness states that this settlement at Itchetuckne he thinks is about thirty miles northwestwardly from the Alachua savanna. Witness states that the party of Harris kept dropping off till they finally all left the country: they left on account of difficulty in getting provisions, and the party becoming quite small. Witness supposes they must have also have been afraid of the Indians. Witness states that after the breaking up of the country in the manner mentioned, and the destruction of the Indian villages and their property by Colonel Smith's and Colonel Williams' party, there were still considerable numbers of cattle ranging the country, but without any person having them in charge, or exercising

control over them; and the cattle were in this situation when the district was invaded by the patriot party, of which witness was one, under the command of Harris. Witness, after Harris' party left the country, was again in the Alachua several times before the exchange of flags. Witness is unable to state whether he was in the Alachua between the time of its invasion by Harris, at the attack made upon the Indians at the Sawannee, by the troops belonging to General Jackson's command: he did not notice the time sufficiently to be able now to recollect, but he thinks it was during the time he lived in Georgia, in the years stated above, and that it was between 1814 and '17. At the time of these visits, witness found Indians about eth Alachua and all through the country. Witness has since become an inhabitant and resident in Alachua country. He moved his hands there in 1823, as nearly as witness can recollect, and moved himself and family in 1824: at this time he found Indians living in the country, and settled about the Alachua. Witness saw a settlement at this time at a place then called Clapboard town, lying in what is now called Hog town. Witness cannot state the distance of this town from the prairie: cannot state the distance to Clapboard town, but it is nearer than Sanfalasco. Witness states that there were not many Indians at this Clapboard town, but there was considerable number at Sanfalasco, where Roman Sanchez now lives—witness supposes about twelve or thirteen miles from the prairie. There was also a considerable settlement at Itchetuckne at this time. These Indians, witness states, remained at these places till, under the treaty of Camp Moultrie, they went were they are now settled, within the present Indian boundary. The witness understands that there was a boundary between the Indians and the Spanish, (at least the Indians always claimed it,) commencing at a little creek called Black creek, on the St. Mary's river, running from that place to the head of Black creek, emptying into the St. Johns; and that it runs thence, as witness supposes, down Black creek to the St. John's river, and thence up the St. Johns; the Indians claiming the country south of Black creek and west of the St. Johns.

Cross-examined by claimant's counsel.

Witness states that Clapboard town lies north of the prairie, and wit ness supposes in a southeast direction from Sanfalasco. Witness states tha his object in these visits, subsequent to the invasion of the country by Har ris's party, was to get Indian cattle wherever they could find them in th country, and drive them off. The Indians were in the habit of stealing o cattle and horses, and we thought proper to return the compliment, gettir theirs in return. There was a warfare carried on between us, and we kill each other wherever we met. This state of warfare was continued till t change of flags. On these visits we went always armed, to protect and d fend ourselves; and the parties or scouts was sometimes as small as six eight, generally about twelve, sometimes consisting of thirty or forty.

The testimony of this witness, so far as the same relates to the In boundary, is excepted to by the counsel for the claimant, but admitte the court.

Samuel Worthington's testimony.

Testimony of Sam'l Worthington.

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control over them; and the cattle were in this situation when the district was invaded by the patriot party, of which witness was one, under the command of Harris. Witness, after Harris' party left the country, was again in the Alachua several times before the exchange of flags. Witness is unable to state whether he was in the Alachua between the time of its invasion by Harris, at the attack made upon the Indians at the Sawannee, by the troops belonging to General Jackson's command: he did not notice the time sufficiently to be able now to recollect, but he thinks it was during the time he lived in Georgia, in the years stated above, and that it was between 1814 and '17. At the time of these visits, witness found Indians about eth Alachua and all through the country. Witness has since become an inhabitant and resident in Alachua country. He moved his hands there in 1823, as nearly as witness can recollect, and moved himself and family in 1824: at this time he found Indians living in the country, and settled about the Alachua. Witness saw a settlement at this time at a place then called Clapboard town, lying in what is now called Hog town. Witness cannot state the distance of this town from the prairie: cannot state the distance to Clapboard town, but it is nearer than Sanfalasco. Witness states that there were not many Indians at this Clapboard town, but there was considerable number at Sanfalasco, where Roman Sanchez now lives—witness supposes about twelve or thirteen miles from the prairie. There was also a considerable settlement at Itchetuckne at this time. These Indians, witness states, remained at these places till, under the treaty of Camp Moultrie, they went were they are now settled, within the present Indian boundary. The witness understands that there was a boundary between the Indians and the Spanish, (at least the Indians always claimed it,) commencing at a little creek called Black creek, on the St. Mary's river, running from that place to the head of Black creek, emptying into the St. Johns; and that it runs thence, as witness supposes, down Black creek to the St. John's river, and thence up the St. Johns; the Indians claiming the country south of Black creek and west of the St. Johns.

Cross-examined by claimant's counsel.

Witness states that Clapboard town lies north of the prairie, and witness supposes in a southeast direction from Sanfalasco. Witness states that his object in these visits, subsequent to the invasion of the country by Harris's party, was to get Indian cattle wherever they could find them in the country, and drive them off. The Indians were in the habit of stealing our cattle and horses, and we thought proper to return the compliment, getting theirs in return. There was a warfare carried on between us, and we killed each other wherever we met. This state of warfare was continued till the change of flags. On these visits we went always armed, to protect and defend ourselves; and the parties or scouts was sometimes as small as six or eight, generally about twelve, sometimes consisting of thirty or forty.

The testimony of this witness, so far as the same relates to the Indian boundary, is excepted to by the counsel for the claimant, but admitted by the court.

Samuel Worthington's testimony.

Testimony of Sam'l Worthington.

Witness states, that he belonged to Harris' party during the time it remained in the Alachua country. There were parties of Indians about the country; witness did not see them, but understood it was so, and was sometimes in scouting parties that went in

pursuit of these, but never overtook any of them: on one occasion got three horses, supposed to belong to a party we were in pursuit of. Witness states that Harris's party went into the country in the very last of 1813 or the first of 1814, and the last of the party left the country in July or August following. Witness thinks Harris was killed about a month before the party left there: he was supposed to be killed by Indians. I was stationed in a block-house in Hog-town at this time; our party consisted of about thirty or forty. Harris was killed at a place south of us, about twenty-five miles, or between twenty and twenty-five miles. There was another block house near to the north side of the prairie, but when it was learnt that Harris was killed this block-house was left, and the whole party gathered into one party at Hog town, which then amounted to thirty or forty. After the evacuation of Harris's party, witness was not again in the Alachua country till 1824, in the latter part of the year—it might be the first part of the year 1825, but witness thinks it was the last of 1824; witness found Indians at this time living at Sanfalasco, but they were then preparing to remove within the present Indian boundary. These Indians lived at Sanfalasco in houses, which, from their appearance, might be three or four years old, they had cultivated fields equal to a smart plantation. Sanfalasco, according to the best judgment of the witness, is twelve or fourteen miles to the north and nearest point of the prairie. The witness states this distance from conjecture, and from having travelled through the woods when he belonged to Harris' party frequently. The road which is now cut through it the witness has never travelled, nor does he know that it has been measured. Witness has lived in Florida, with the exception of one year, ever since 1812. Witness states that, in 1812, he joined the patriots at St. Mary's river, and came on to the plains near to St. Augustine. That at the end of four months, as near as witness can recollect, he joined a company commanded by Captain Nealy, a volunteer company: that, in this company, belonging to the command of Colonel Smith, he remained till March, 1813, and was paid during this time by the United States' paymaster for his services, by the month, first part at five dollars, and latter part of the time at eight. That during the time that he belonged to Nealy's company, he was allowed to volunteer into, and go with Nunin's party into the Alachua, and after he came back was paid for the whole time he was so with Nunin's party by the United States. After he was discharged from Captain Nealy's company by Lieut. Bailey, in March, 1813, witness lived in St. Mary's till Harris' party was collected; after Harris's party dispersed, witness lived about a year in Georgia, upon the St. Marys, and lived after that in Florida, upon the St. Marys; lived on the St. Marys in several places till he went into the Alachua country in 1824. Witness has always understood that the prairie was called Alachua prairie. Witness states that, from the time Nunin's party went into the country till the exchange of flags, the country was in a continued state of disturbance from the marauding parties of the whites or of the Indians. Witness did not see this, but understood so at the time, and knew four or five men that belonged to a party that went out in 1817 or 18, that were killed. Witness states that he has always understood, ever since he arrived in the country, which was in 1811, that the Indian boundary was as stated by Mr. Summerall in his testimony, to wit, commencing at Little Black creek, on the St. Marys, and running to the head of Black creek emptying into St. Johns; thence down Black creek to its mouth, and up the St. Johns. Witness does not speak Spanish, and

has never heard any Spanish people speak of this boundary; he derived his information respecting it from the people who lived on the St. Marys, on the St. Johns, and by the patriots. Witness states that his information was derived altogether from those people called patriots, except from a party of workmen upon Little Black creek, who told him the same thing eight days before he joined the patriot party under McIntosh: this party consisted wholly of Americans, but supposes Underwood, one of the number, was a Spanish subject. The witness states that the boundary was a subject of frequent conversation, as those who wished to settle were unwilling to go within the Indian limits, as it was generally understood the Indians would not permit the settlement of the whites within those limits: these limits include the country south of Black creek and west of St. Johns. The Alachua is in the district of country spoken of by him above.

The testimony of this witness, so far as the same relates to the Indian boundary, is excepted to by the counsel for the claimants, but admitted by the court.

Britton Knight's testimony.

Testimony of Britton Knight.

Witness states that he came to East Florida in the year 1807, and has resided here ever since; that he belonged to the patriot party, was under McIntosh; that the patriots were promised five hundred acres of land each, and warrants, in some instances, were given to them before they went into the country, some after; they were told that this was done under the authority of the United States, and that the lands would be guaranteed to them by the United States; McIntosh was attended by a body of United States' troops; but, according to orders, the United States' troops never preceded the patriots' troops; but they kept very close together. Witness did not accompany this party into the Alachua; first entered Alachua with Harris's party in January, 1814. Harris took his first station at the northeast end of the prairie, and remained in the Alachua country till the August afterwards; Harris himself having been some time killed. During the stay of Harris's party in the country, the Indians in parties were still ranging through it, but, when discovered, were pursued and driven off by the American or Harris's party. Their station seemed to be to the south towards the Sawannee. We did not burn up their villages; Tennesseans had burnt them up before; but there was one village standing callen Sugartown; whether there were any Indians in it witness cannot say; but there were negroes. We caught several of them, and carried them in, and sold them in the camp, and they were carried out of the country, supposes to Georgia. This Sugartown, witness understands, was a little to the west of Orange lake: witness supposes something like twenty miles to the south of the prairie. Witness says that he went through the villages with a detachment of Harris's command; looked like an old village; the party, as they approached was discovered, and those, that inhabited it fled; they overtook some negroes, but saw no Indians. Witness was not again in the country till 1823, when he went and settled at Alachua, at Hog-town. At this time Clapboard town, so called because the huts were made of clapboards, consisted of three or four clapboard huts, and of four Indians with their families: it was a new village, the huts probably built that year: they have made some corn there that year; in 1824 they left the place; as did also the Indians at Sanfalasco, and went to Big swamp: I saw Sanfalasco after the Indians had left it; did not look as new as Clapboard town. From

what I saw, and heard, and learnt, of a particular gathering, supposed there might have been twenty heads of families there; but witness don't know but that some of them came from, and belonged to, Itchetuckne: there was a smart chance of houses there, but less than twenty; might have been that number, did not count them. Witness is not able to state any thing about the country between the time of Harris's invasion and 1823, when he became an inhabitant; but has heard that, in the interim, Indians were roaming the country, and patriot parties went into the country to get cattle: a party of this description were principally killed by the Indians in 1818, as witness understood. Witness says that, as to the Indian boundary, he understood that it commenced at the mouth of Little Black creek, run from thence to the head of Black creek, emptying into the St. Johns, down Black creek to the St. Johns, and up the St. Johns, including the country south of Black creek and west of the Johns. Witness says he was in St. Augustine in 1809, with Oliver Smith, an inhabitant, and a Spanish subject; that Smith's object was to memoralize for, and obtain, a tract of land in that country described by witness as in the Indian boundary; that he was with him at Governor White's, and the Governor told him he could not give him land there, because it was within the Indian boundary, but that he might take land elsewhere. Witness states that he heard of, and always understood the boundary is as he has described it, from the conversation of the people on the St. Marys, and so across to the St. Johns; that he never heard the boundary doubted; the people from whom he heard it were generally patriots, but some of them were also Spanish subjects, but not Spaniards: he heard it as well before 1812, the commencenent of the patriot's operations, as at that time and afterwards.

The testimony of this witness, so far as the same relates to the Indian boundary, and the refusal of Governor White to grant land to said Oliver Smith within said boundary, is excepted by the counsel for the claimants, but admitted by the court.

Cross-examined by claimant.

Witness states that he has been at Sanfalasco since the Indians left there; that it has been altered by Roman Sanchez, who bought the improvements there from the Indians, as he was told. The Indians at Clapboard town belonged to Hick's party, as he understood. Witness says that, at the gathering which he spoke of, he understood there was as many as twenty Indians, but cannot say there were twenty heads of families, or that they all resided at that place. Witness says that, when he returned to Alachua in 1823, there were no other settlements he heard of or knew about Alachua, than Clapboardtown, Sanfalasco, and Itchetuckne, which he has spoken of, but did not see. Witness says that, by Alachua country, he means all the country south of Black creek, and west of the St. Johns to the Sawannee: this was understood by the Americans; but witness has learnt the name Alachua, by the Indians, meant only the Savanna, which, in the Indian language, is the same as *jug* in the English, and was so called by the Indians, because the water sinks into the ground near the lower end of the Savanna and prairie, as water sinks into a *jug*: and Sanfalasco, the witness understood, imports in the English language *bottle*, the water also sinking into the ground in the same way. The Sanfalasco Indians belonged to Hick's party; that the Indians which belonged to Hick's party, and which were settled at Clapboardtown and at Sanfalasco, had not formerly, and in

1812, belonged to the Alachua, or to any party of Indians resident in that vicinity; they lived west of the Sawannee until broken up by General Jackson in 1818: the Indians that had formerly lived in and about Alachua, were Payne's and Bowleg's Indians, but Payne's, particularly, lived in Alachua, about the prairie; and these witness, has understood, were also nearly destroyed by the inroads made upon them in 1812 and '13, and particularly by Nunin's party. This he has been told by the Indians also, and that there are but few remaining; and that he did not know that these Indians ever came back—what became of them, witness does not know; their towns were vacant when he came back to the country in 1823. Witness understood they were at the Big swamp; Hick's party, Payne's and Bowleg's, were all called Seminoles; and, when in a state of war, were under the control of Hick, he being the greatest chief. Clapboardtown is fifteen miles from Levy's, and sixteen from the nearest point of the prairie. Sanfalasco is twenty two miles from Levy's, and sixteen from the nearest point of the prairie. Itchetuckne is a more distant place than Sanfalasco. Witness thinks it is fifteen or twenty miles more distant: but witness cannot speak with certainty of the distance. Witness states that, if there had been any other settlement of Indians near to the Alachua savanna, or as near as those he has spoken of, he thinks he must have heard of them. Witness states that, at this time, there were none on the great survey, that is, the Arredondo land; if there had been any there, he must have heard of them. Witness states that Clapboardtown is without the supposed limits of the Arredondo grant, and witness lives within the supposed limits two hundred and fifty yards. Witness states that Big swamp is within the present Indian boundary, and witness thinks that the nearest limit of the Indian boundary is about twenty-five miles from the nearest part of the prairie—a part of the Wacahootey, formerly called Bowlegs' town, witness understands, is within the limit of the Alachua grant. Witness says that he has understood that the Indians who inhabited about the Alachua had large stocks of cattle; has seen herds come from the hammock into the prairie; he supposes there might have been a thousand at a time: this was in the patriot times when he was with Harris; he saw no cattle there; when witness returned to the country in 1823, but was over the ranges repeatedly, and should have seen them, he thinks, if there had been any; but the Indians, as he understands, and he so understood, both before and since the transfer of the country, finding that the whites, when they invaded the country, were in the habit of taking and driving away their cattle; concluded that the possession of these cattle was the cause of the attacks and troubles to which they were subjected, and went themselves and killed their cattle to be relieved from these troubles in future.

William H. Ward's testimony.

Testimony of William H. Ward.

Witness states that he became a resident of Florida, in Alachua, in 1823; had, before that time, been an inhabitant in Georgia into Alachua, and joined Harris' party; soon after it, went into that country, and remained with it until it left there. During this time, when out in detached parties from the main command, we found parties of Indians also ranging the country. Witness found no settlement where they lived, but understood, from others of the command, that the place at Itchetuckne was occupied by the Indians at that time. There were considerable number of cattle in the country at this time, but witness did

not see many horses. The last of Harris's party left the country in July or August, 1814, as well as witness can recollect. After Harris's party left the country, witness was repeatedly, perhaps every year, up to 1818, in the country, with parties that entered it, to obtain cattle and kill Indians: the same thing was done by the Indians: they even crossed the St. Mary's into Georgia, and took cattle and killed the whites. Witness says that, in making their incursions, they found Indians in the country ranging about apparently to drive off cattle, and especially, in 1818, the country appeared to be filled with them, but found no settlement except a small clearing in the Big Prairie hammock, near the Savanna; and this clearing we found no Indians, but found some encamped about two miles from there. Witness saw no house or hut at the clearing or elsewhere about there, but it was a new clearing, and a fence was commenced; cannot state how large the clearing was: might have been half an acre—might have been larger, can't say. Skirmishes frequently took place between the white men and the Indians; and at the time, in 1818, when the clearing was discovered, six of our party was killed, and two wounded. Witness still found numbers of cattle in the country in 1818, but not as many as formerly: it appeared that the Indians were driving them off; we discovered the trails of cattle going towards the Sawannee to the west, and also trails towards the south; he found cattle also shot down; all of which, he supposed, must have been done by the Indians, as there was no other whites there but one party. In 1823, when he went to Alachua, he learnt that there was an Indian town between Picolata and the head of Santa Fe, as witness supposes, south of Bellamy's road. Witness saw some Indians in Alachua that said they belonged there. Witness, from his understanding, supposes it was about twelve or fourteen miles from St. Johns, and seven or eight miles from the head of the Santa Fe; understood there was a considerable number there in 1823. I first heard at this time, in the year 1821 or '22, from William Daniels, while living on the St. Marys, that Paine was killed in Nunin's battle, and Bowlegs, as witness understood, succeeded to the command of the Alachua Indians. After this, Bowlegs went over the Sawannee to a place called the Clay hills, as witness has been informed; and that, after the Indians were broken up on the other side of the Sawannee, by General Jackson's command, he has understood that Bowlegs crossed the Sawannee back again; but when he went, witness does not know, and do not recollect that he has heard. Witness says he was in Hogtown in 1823: it might have been later; he heard of the settlement of Clapboard and Sanfalasco, but saw no Indians at Clapboardtown—but saw the chief of the Sanfalasco village at Hogtown; he heard of no other settlement any where about the Alachua. Witness states that the Indian boundary is the same as the other witnesses state, and that he has always heard of it when he has heard of any thing about it; ever since he was a boy he has frequently heard it spoken of; and the Indians would not suffer people to settle within this boundary, as witness has understood.

The testimony of this witness, so far as the same relates to the Indian town between Picolata and the head of the Santa Fé, is excepted to by the counsel for the claimant, but admitted by the court.

Daniel Hurlbert's testimony.

Testimony of Daniel Hurlbert.

Witness states that he has resided in this town since 1802, but followed the sea until 1821; but that two years of that time, he resided here constantly. Witness became a Spanish subject immediately on his arrival here in 1802. Witness states that, in 1808,

he and one Bushnell applied to Governor White for permission to cut cedar on the west side of St Johns, and to the southwest of Black creek; and that Governor White refused to grant them permission to cut timber there, alleging that it was within the Indian boundary, and beyond his jurisdiction. but the governor gave them permission to cut on the east side of St. Johns. Witness states that, at the time he applied to Governor White for permission to cut timber, the governor showed him a map on which the Indian boundary was marked, and that the place from which he asked to cut timber was within that boundary; and that the governor told him that the boundary was the same as when the province belonged to the British, and that it had remained so until the time of which he spoke. That, before McIntosh's revolution, the Indians occupied, and had large stocks of cattle in the Alachua country. Witness states that, after the revolution, they were pretty much broken up, and rambled about the country, and their cattle were stolen in large droves, as much as 3 or 400 at a time, by the Americans, from across the St. Marys, and on this side too. Witness adds that the Spaniards did not dare to venture into the Alachua to make settlements until after the exchange of flags. Witness states that he has always understood that the Indians claimed the Alachua country; that he has understood, since they were broken up in 1812, '13, and '14, that they came back into the country after that, and collected horses there, and made some settlements: but whereabouts those settlements were made, witness cannot say. Witness states that Governor White died in this city in 1811.

Cross-examined by claimant.

Witness says that he understood that the Indians, after the disturbances in 1812, '13, and '14, still persisted in their claim to the country, because he understood they came back to it, drove off Harris's party, and killed Harris, and occupied it again, as he has stated it above, and there were no other settlements in the country at that time but Indian settlements, and that the witness also understood it from the common report of the people of the country. Witness also states that he has heard the same things stated by the Indian traders. Witness states that he has such an understanding of the Spanish language for the last twelve years as to understand common conversation: has not understood it longer.

The claimants object to the testimony of Daniel Hurlbert, so far as it states what Governor White *said* was his reason for refusing to permit the witness to cut cedar on the west side of the St. Johns, above Black creek, because it is hearsay of a particular fact, by which representation cannot be established; and, also, as to what the witness said Governor White *said* about the Indian boundary as hearsay; and, also, on the ground that the whole of his testimony abovementioned is irrelevant to the issue. The claimant also objects to Mr. Hurlbert's testimony as to what he heard certain Indian traders say as to the Indians claiming the Alachua country, because it is hearsay.

Anthony Rutant's testimony.

Testimony of Anto. Rutant.

Witness states that he went to Alachua as an associate of Mr. Levy, from St. John's river, in July, 1822, to settle on a piece of land there claimed by Mr. Levy; that some of the Indian chiefs came to him after he had been there a few days, and told him that they had previously told him at St. Johns not to come into the Alachua country to

settle there: one of these chiefs was Micanope, another of them was called Jumper—he heard that others amongst them were chiefs, but whether they were so does not know: Micanope told him that that place was theirs, the Indians, and the bones of their ancestors lay there, and that he would suffer decapitation before he would give the place up. He was, at this time, at the house occupied by Mr. Wanton: at the distance of eight miles from Mr. Wanton's, on the road from Wanton's to Big swamp, he passed through an Indian negro village. Witness states that he understood Mr. Wanton's house was at the centre of the Arredondo and Son grant. Witness says that the same Indians who met him in Alachua in July, above stated, had, in June previous, been to the place then occupied by him, called Hope Hill, on the west bank of the St. Johns, and told him that that place was theirs, but, as they were pleased with him, they would permit him to remain, but that they had heard that he was preparing to go to Alachua to settle, and they forbid him to do so. Witness went to Alachua again in the month of February, 1823:—he then saw some Indians, but they said nothing to him.

Cross-examined by claimant.

Witness states that he settled at Hope Hill in the beginning of March, in 1822; that the same Indians had visited him several times before the visit in June, but they said nothing about their claim except the first time, when they were intoxicated; they then told him that they owned the land where he was. Witness states he has suspected that the Indians were induced to say what they did to him by a white man, but is not certain; and that, on two occasions mentioned by him, when the Indians declared Hope Hill to be theirs, they had come from this person's place. Witness says that, when they did not come from that place, they were quiet, and said nothing on the subject. Witness states that he has understood that there was an altercation, but did not know the particulars of it, between that person and Mr. Levy. Witness states that the person and himself, as the associate of Mr. Levy, had goods to dispose of to the Indians, and that none could be purchased in that vicinity but of those two, and that liquor could be obtained only from this person. Witness states that his design in going to Alachua had not been mentioned to the Indians by him: does not know that the person referred to by him knew it. What the Indians said in March to a witness was reported in English, by an Indian, to a young Frenchman present, who understood English, and by him interpreted in French to witness; and what was said in June to him was interpreted to him by an Indian negro, who understood Spanish, which witness himself understood. Witness supposes the person referred to had great influence over the Indians.

Examined by U. S. Attorney.

Witness being inquired of by counsel of the United States who the person was to whom he has referred as suspected by him to have instigated the Indians to the course they took as stated by him above, replies that, as it is a mere suspicion with him, he is unwilling to name him; and the inquiry was thereupon no further insisted on. Witness states that, at the interview of the Indians and the witness at Alachua, an Indian negro interpreted for him, by the name of Abraham, so far as witness can recollect, who came with Micanope. Witness states that, at the time witness went to Alachua to settle there in July, 1822, there was at Mr. Wanton's place Mr. Wanton, his children, a colored woman, and two men, that Mr. Levy had sent there, and himself; he did not know or hear of any other settlements there.

The counsel for the claimants object to the testimony of Mr. Rutant as to what he heard from, or what was told him by the Indians, because it is hearsay: including all that the said Indians said to him about their having a claim to the Alachua country, for the same reason, that it is hearsay; also, to all his testimony of information collected from rumor and report.

Francis P. Fatio's testimony.

Testimony of F. P. Fatio.

Witness states that, in 1774 or '75, he understood at that time, and has since understood, that a talk or treaty was held by Governor Tonyn with the Florida Indians at the Cow-ford, for the purpose of agreeing upon a line of demarcation between the Indians and the British, or of recognizing one previously established. Witness states that his impression is, and the general impression was, as it was talked publicly of, and at the time and afterwards, that the boundary agreed upon or recognized at this time, run a direction north and south, and nearly parallel with the St. Johns, about fourteen miles more or less west of the St. Johns, in the neighborhood of Black creek. Witness has no impression as to the northern or southern limit of this boundary. Witness lived about fourteen miles below the Cow-ford at the time of this talk, and was then in his thirtieth year. Witness says that his father was at the treaty—staid there but one night, as he believes.

Cross-examined by claimant.

Witness states that he left the country in 1782—went with the British regiment, to which he belonged, into the Carolinas; when peace took place went to England, and did not return to this country till the latter end of 1793, and has lived a resident of it since that time.

Decision of the court on the testimony offered in this case in relation to the Indian boundary, to wit:

SUPERIOR COURT, *East Florida*—

GEORGE J. F. CLARKE, *vs.* THE UNITED STATES. } *Decision of the court on Indian testimony.*

Decision of the court on Indian testimony.

The court rejects all the testimony offered in relation to the Indian boundary; because, 1st. Agreeably to the decision of the Supreme Court in the case of Arredondo, the claim of the Indians is not before the court, it being of an adversary nature; and no adversary claim, those of the United States and the petitioner excepted, are now to be investigated or adjudged. 2d. The Spanish Government, by whom the grant was made, was competent to decide; and, by making the grant, did decide this question at the time thereof. It is, therefore, a matter already adjudicated by the proper authority, and not open to this court, or to the American Government. 3d If the Indians of Alachua, at the time this grant was made, possessed an unextinguished claim to the occupancy of these lands by the treaty of Moultrie, they have for ever relinquished that claim, and that relinquishment to the United States, who now, and at the time of that treaty, stand in the place of the Spanish Government, must, on principles of law and equity well established, enure to the benefit of the grantee now before the court.

But, though this testimony and evidence is not received and considered by this court, it is to remain on file, and to be certified to the court above in case of appeal.

No. 3.

Being commission, and testimony taken under the same, duly executed and returned to the clerk's office of this court, as follows, to wit:

TERRITORY OF FLORIDA—*In the name, and by the authority of, the United States of America, to Romeo Lewis and James G. Ringgold, esquires, greeting:*

Commission to examine Benj. Chaires.

Whereas certain causes are now depending in the superior court for the eastern district of Florida, in which said causes George J. F. Clarke is claimant, and the United States of America defendant, and it being necessary to the investigation of said causes to have the testimony of Benjamin Chaires.

Know ye that, confiding in your prudence, ability, and integrity, you are by these presents appointed, and full power and authority are hereby given to you, diligently to examine the aforesaid witness upon certain interrogatories to be exhibited to you, as well on the part of the said claimant as on the part of the said defendant, or of either party in said causes; and therefore, you are hereby authorized and requested, on a certain day or on certain days, and at a certain place or at certain places, to be appointed by you for that purpose, to cause the said witness to come before you, and then and there to examine him on the said interrogatories on his corporal oath, or on his solemn affirmation, first taken before you, and to take such, his examination, and reduce it to writing, on paper; and, when you shall have so taken it, to sign the same with your names, and enclose and seal the whole conformably to the instructions hereunto subjoined.

And you are hereby further requested that, before you act in, or be present at the swearing or solemn affirming, and the examination of the said witness, you do severally make oath or solemn affirmation that, according to the best of your knowledge, you will truly, faithfully, and without partiality to any or either of the parties in said causes, take the examination and deposition of every witness produced and examined by virtue of this commission, upon the interrogatories hereto annexed and produced to you; and that you will not publish or make known to any person whomsoever, except the clerk or clerks who may by you be employed and sworn to secrecy in the execution of this commission, the contents of any of the depositions taken by you in this commission named, until publication shall pass by rule or order of the said superior court. And you are hereby further authorized and requested, jointly or separately, to administer such oath or affirmation to the rest, or any of you, and also to administer an oath or solemn affirmation of secrecy to any clerk or clerks whom you may employ to take or transcribe the deposition of the witness so examined by virtue of these presents, before such clerk or clerks shall be permitted to act in, or be present at such examination.

Witness the honorable Joseph L. Smith, judge of the superior court for the eastern district of Florida, this fifth day of February, in the year one thousand eight hundered and thirty, and in the fifty-fourth year of the independence of the United States of America.

Seal of the court.

GEORGE GIBBS, *Clerk.*

Instructions.

When the testimony is taken, the commissioners are required to sign their names at the bottom of each sheet of the depositions, and of the whole, after fixing and sealing the several sheets together, then to enclose the whole examination, commission and all, in an envelope, sealed up, and their names written on the outside across the seals, and to endorse the packet on the corner thereof with the names of the parties, and to direct the same to George Gibbs, esquire, C. S. C. E. D. F., at St. Augustine, and put it in the post office, or deliver it to the agent or attorney of the party who obtained the commission.

TERRITORY OF EAST FLORIDA—*District of East Florida, Superior Court.*

THE UNITED STATES OF AMERICA, *ats.* GEORGE J. F. CLARKE. } *Petition for* 26,000 *acres of land.*

THE SAME, *ats.* THE SAME. } *Petition for* 15,000 *acres of land.*

THE SAME, *ats.* THE SAME. } *Petition for* 16,000 *acres of land.*

Interrogatories to Benjamin Chaires.

Interrogatories to be propounded on behalf of the said United States to Mr. Benjamin Chaires, a witness in the above entitled causes, the answers to which are to be read as evidence therein.

1st. Are you acquainted with Mr. George J. F. Clarke, the above named petitioner? if you are, please to state how long you have known him?

2d. Had or had not the said George J. F. Clarke any land to the westward of St. John's river, in the district of country commonly called Alachua, before the 24th day of January, in the year 1818. Please to state all you know or have heard the said George J. F. Clarke say on that subject.

3d Had you or had you not frequent conversations with the said George J. F. Clarke, in the year 1821, on the subject of the lands to the westward of the St. John's river, in the said district of country called Alachua? if you had, please to state at what time in said year, and particularly what he then or at any other time before that period, after the 24th January, 1818, told you of his intention to procure grants to land in that section of country, and whether he did or did not say that he had no lands there at that time?

4th. Did or did not the said George J. F Clarke, sometime in the year 1821, (or at some other time, and if at any other time, at what time,) apply to and obtain money from you to enable him to procure (what are generally called) Spanish grants in said Alachua country, and particularly to procure a mill grant there. If he did, please to state particularly what he told you at the time he obtained said money about his intention to procure grants of land in the section of the country abovementioned, or elsewhere, in East Florida.

5th. If you know of any other matters and things which may be of service to the said United States on the trial of the above entitled causes, or either of them, please to state them as fully and particularly as though you were specially interrogated thereunto.

THOMAS DOUGLASS,
U. S. Att'y for East Florida.

Cross-interrogatories to same witness.

Cross-interrogatories to B Chaires.

First. Did you or not accompany George J. F. Clarke and others in an exploring expedition up the St. John's river, towards its head waters, about April, 1818, in a boat he fitted out for that purpose?

Second. Did not Clarke, on the same trip, offer to sell you a tract of land at a place called Yallahassasa, on the west side of St. John's river, at that part of the country called then Alachua, (your expressing a desire to purchase,) and telling you that he held a grant for the same, which might be located any where on vacant land?

Third. Did you or not, prior to the year 1821, inform said Clarke of some bodies of land below the junction of Flint and Chattahoochie rivers, and offer to purchase, if he would remove the location of his mill grant from St. John's river to that place; and did not said Clarke then tell you he had already removed a moiety of it into Alachua country?

Fourth. Please to state, particularly, the various sums of money by you ever advanced to said Clarke, the times when, places where, and quantities how much, and all you know about it?

Fifth. When on the voyage abovementioned, were you not at a place called the White Spring? did not Clarke say, and was it not admitted, that spring was on the lands of his, and had been granted to him about two years before, absolutely, as part of a mill grant, he having complied with the condition of building a mill?

Sixth. Had you, at the time of said voyage, or before, heard of a proscribing date in the treaty in relation to land grants; and if not then or before, at what time subsequently did you first become acquainted with it?

Seventh. State any other matter you may know material to the said Clarke?

JOS. B. LANCASTER,
Atto. for Clarke.

At the execution of the foregoing commission issued out of the superior court for the eastern district of Florida, the fifth day of February, eighteen hundred and thirty, directed to Romeo Lewis and James G. Ringgold, of Leon county, middle Florida, empowering them to examine Benjamin Chaires in certain causes depending in said court between George J. F. Clarke, complainant, and the United States, defendant; we, Romeo Lewis and James G. Ringgold, commissioners in the said commission named, having met this thirty-first day of May, eighteen hundred and thirty, in the county aforesaid, pursuant to notice, and taken the oath to the said commission annexed, and Charles Pindar being appointed clerk, and having likewise taken the oath to the said commission annexed, the commissioners proceeded to take the following deposition, to wit:

Benjamin Chaires, of lawful age, being first duly sworn on the Holy Evangely of Almighty God:

Answers of B. Chaires to interrogatories.

The first interrogatory. Witness answers that he is acquainted with George J. F. Clarke, the plaintiff in the above entitled cause, and has known him since the winter of 1817 and 1818.

Second. Witness answers that he does not know certainly whether said Clarke claimed any lands in the district of country called Alachua prior to the 24th January, 1818.

Third. Witness answers that he does not recollect to have held any conversation with the said Clarke upon the subject of lands in the year 1821, but that, in the years 1818 and 1819 he held frequent conversations with him upon the subject of Spanish grants for lands in the district called Alachua, and elsewhere in the province of East Florida. That said Clarke, in one or more of said conversations, offered to sell lands to witness, situated in Alachua, stating, at the same time, that although the Indians occupied the Alachua country, the Spanish Government would issue grants for lands there; but that as it was the wish of the Government to cultivate friendly relations with the Indians, such grants, when made, would be issued under an injunction of secrecy, as it would offend the Indians were they to hear that the Government was granting away their lands. Witness cannot state positively that the grants then spoken of by him were said by Clarke to have been issued, but the impression made upon the mind of witness at the time was, the grants spoken of by Clarke for lands in Alachua had not been issued. At this time the treaty had not been concluded, at least we at St. Augustine had heard nothing of it. It was, however, generally understood there, as witness believes, that Florida would be ceded to the United States in a short time.

Fourth. Witness answers that, about May, 1818, said Clarke applied to him for the loan of money for the purpose, as he said, of paying Entralgo (the escribano) office fees for grants, and witness loaned him two hundred dollars for that purpose. Witness does not recollect to have heard said Clarke say where the lands were situated which he intended covering with said grants, nor does he recollect that Clarke at any time mentioned to him his intention of obtaining a mill grant in Alachua.

Fifth. Witness states that he does not recollect any thing further which will be of service to the United States on the trial of either of the above entitled causes.

Answers to cross interrogatories.

Answers of Benjn. Chaires to cross-interrogatories.

First cross-interrogatory. Witness answers, that he did accompany said Clarke on a trip up the St. John's river about April, 1818.

Second. Witness states that he does not recollect or believe that, on that trip, said Clarke spoke to him of having a grant for lands at Yallahassasa or elsewhere in Alachua. Witness recollects that sometime after they returned, perhaps in the fall of that year, Clarke offered to sell him a tract of land at Yallahassasa, in the Alachua country. Witness further states, that, while on the said trip up the St Johns, said Clarke interrogated Tony Proctor, a free negro, in regard to the lands of the Alachua, and particularly in regard to the lands at Yallahassasa, and that said Clarke took notes of the information received from said Tony Proctor; and the understanding and belief of witness ever has been that the grants for lands at Yallahassasa, and elsewhere in Alachua, was obtained after we had returned from said voyage; and that said Clarke obtained, while on that excursion, such information as enabled him to fix upon, and designate particularly, tracts in that country.

Third. Witness answers that, in the course of some one of the conversations above referred to, he stated to said Clarke that there were valuable lands on the Appalachicola river, and on the Chattahoochy, above the junction of that river with the Flint, within the bounds of Florida, and inquir-

ed whether grants could be obtained for lands there: said Clarke seemed to be of opinion that such grants could not be easily obtained. Witness does not recollect that any thing was said upon the subject of the removal of said Clarke's mill grant to Alachua or elsewhere, at that or any other period. Witness further states, that he never did hear (to the best of his recollection) from said Clarke, or any other person, any thing upon the subject of the removal of said mill grant, or any part thereof, from the St. Johns or elsewhere, to the Alachua or elsewhere, until after the appointment of commissioners by the United States to examine and report upon Spanish grants in East Florida.

Fourth. Witness answers, that the sum of two hundred dollars abovementioned, was the only sum ever advanced by him to said Clarke, which sum said Clarke has since returned to him.

Fifth Witness answers that, when on the voyage mentioned, he recollects to have been at a spring about half a mile west of the river St. Johns, which Clarke said was on a tract of land belonging to him, and he exhibited to witness a plat of a tract of land situated on the west bank of the St. Johns, between Picolata and the mouth of Black creek, running ten miles with the river, and two miles and a half back from it. The spring above referred to is within the bounds of the beforementioned tract of land: said Clarke at that time informed witness that the beforementioned tract of land had been granted to him, in absolute property, by the Spanish Government, as a consideration for the building a mill, which he, said Clarke, had erected on Amelia island.

Sixth. Witness answers that the time of said voyage was anterior to the date of the treaty; therefore he could have heard nothing concerning it. Witness believes he never heard of the proscribing date in the treaty until it was published, nor does he believe that it was generally known at St. Augustine anterior to that period.

Seventh. Witness answers that he does not recollect any think more favorable to said Clarke, on the trial of either *of either* of said causes. And further this deponent saith not.

BEN. CHAIRES.

Sworn to, and subscribed before me, this 31st May, 1830.
TURBUTT R. BELTON, *Jus. Peace.*

The execution of this commission appears by certain schedules to this commission annexed.

ROMEO LEWIS, *Com'r.* [SEAL.]
JAMES G. RINGGOLD, *Com'r.* [SEAL.]

No. 4.

Being the testimony of Antonio Alvarez, offered in evidence in this case on the part of the United States, and objected to by the counsel for the claimant as irrelevant, and objection sustained by the court, but permitted to be placed on file, that it may become a part of the record in case of appeal, to wit:

DISTRICT OF EAST FLORIDA, *Superior Court.*

Interrogatories to Anto Alvarez. THE UNITED STATES, *vs.* GEORGE J. F. CLARKE. } *Claim for* 26,000 *acres.*

THE UNITED STATES, *ats.* GEORGE J. F. CLARKE. } *Claim for* 16,000 *acres.*

THE SAME, *ats.* THE SAME. } *Claim for* 4,000 *acres.*

Interrogatories to be propounded to Antonio Alvarez, esquire, a witness to be sworn and examined on behalf of the United States, before Elias B. Gould, esquire, presiding justice of St. John's county.

1st. Did you or not hold some office, or act as clerk in some office, under the Spanish Government of East Florida, which had relation to the granting of the public lands? If you did, when, how long, and what office?

2d. Do you, or do you not, know one George J. F. Clarke? If you do, please to state how long you have known him, and what office or offices (if any) he held under the Government aforesaid; and, particularly, whether all the grants of land made by that Government, in East Florida, to George J. F. Clarke, were, or were not, made to the same George J. F. Clarke?

THO'S DOUGLASS,
U. States Att'y.

IN THE SUPERIOR COURT, *District of East Florida.*

Answers of Anto. Alvarez. THE UNITED STATES, *ads.* GEORGE J. F. CLAKE, } *Claim for* 26,000 *acres.*

GORGE J. F CLARKE, *ads.* THE UNITED STATES. } *Claim for* 16,000 *acres.*

THE SAME, *ads.* THE SAME. } *Claim for* 4,000 *acres.*

The answers of Antonio Alvarez to the interrogatories propounded to him in the above entitled causes. The said Antonio Alvarez having been duly sworn—

To the first interrogatory, witness answers, that he held the office of clerk in the office of Government secretary from 1807 till 1821, with two short intervals.

Second. Witness says, that he has known said George J. F. Clarke as long as he had any recollection. He held several offices under the Spanish Government; and, particularly, the offices of surveyor general and judge of the St. Mary's or northern district. All grants of land made to George J. F. Clarke, in East Florida, were made to the person to which deponent has reference, and is referred to in this interrogatory.

ANTONIO ALVAREZ.

Sworn and examined before me, the 22d day of May, 1832.

E. B. GOULD,
Presiding Justice, St. John's county.

No. 5.

Being the testimony of John Lee Williams, offered in evidence in this case on the part of the United States, and objected to by counsel for claimant as irrelevant, and objection sustained by the court, but allowed to be placed on file, that it may become a part of the record in case of appeal, to wit:

DISTRICT OF EAST FLORIDA, *Superior Court.*

Interrogatories to John L. Williams.

THE UNITED STATES, *ats.* GEORGE J. F. CLARKE. } *Claim for* 26,000 *acres.*

THE SAME, *ats.* THE SAME. } *Claim for* 16,000 *acres.*

Interrogatories to be propounded to John Lee Williams, esquire, a witness to be sworn and examined on behalf of the United States in the above entitled cause, before Elias B. Gould, esquire, presiding justice of St. John's county.

1st. Are you not acquainted with the geography of East Florida?

2d. Do you or not know a swamp in East Florida called Durbin swamp? If you do, please to state where it is situated; how far *east* of St. John's river; and how far it is from said Durbin swamp to Turnbull's swamp? and whether or not Turnbull swamp is near the Hillsborough river; and whether the Hillsborough river is or is not east of St. John's river?

THO'S DOUGLASS, *U. S. Att'y.*

SUPERIOR COURT, *District of East Florida.*

Answer of J. L. Williams.

THE UNITED STATES, *ads.* GEORGE J. F. CLARKE. } *Claim for* 26,000 *acres.*

THE SAME, *ads.* THE SAME. } *Claim for* 16,000 *acres.*

The answers of John Lee Williams to the interrogatories propounded to him in the above causes—the said Williams being first duly sworn.

To the first interrogatory, witness says, that he is imperfectly acquainted with the geography of East Florida.

Second. Witness knows the said Durbin swamp very well. It lies from six and a half to fourteen miles east of St. John's river, and crosses the King's road about twenty miles northwest of the city of St. Augustine. It is about one hundred miles from Durbin's swamp to the north end of Turnbull swamp, on Hillsborough river: this river is east of St. Johns.

JOHN LEE WILLIAMS.

Sworn to before me on the 23d day of May, 1832.

E. B. GOULD,
Presiding Justice, St. John's county.

And afterwards, before the superior court for the eastern district of Florida, holden at the court-house in the city of St. Augustine, at the term of May, in the year of our Lord one thousand eight hundred and thirty-two, to which term this cause had come by regular continuance, to wit: on Saturday, the seventeenth day of said term, and the twenty-sixth of said month, the following *decree of confirmation* was entered of record in this cause, to wit:

GEORGE J. F. CLARKE,
against
THE UNITED STATES OF AMERICA. } *Land claim* 26,000 *acres.*

Decree of confirmation.

Whereas George J. F. Clarke did, in pursuance of the act of Congress of the United States, entitled "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," and approved the 23d day of May, 1828, on the fourth day of April, 1829, file his petition for the confirmation of certain lands therein mentioned in the clerk's office of the superior court for the eastern district of Florida. And *whereas* the attorney of the United States for this district did duly appear and answer said petition; and this cause coming on to be heard this day, the said claimant, by his counsel, offered in evidence copies from the office of the keeper of the public archives of the original grants on which this claim is founded, to the receiving of which in evidence the said attorney for the United States objected, alleging that the original grants *themselves* should be produced and their *execution* proved, before they could be admitted in evidence, and that the originals only could be received in evidence; which objection was overruled by the court; and the copies from the office of the keeper of the public archives, certified according to law, was ordered to be received in evidence, and the court further ordered that, though by the express statute of this Territory, copies are to be received in evidence, yet, in cases where either the claimant or the United States shall suggest that the *original* in the office of the keeper of the public archives is deemed necessary to be produced in court, on motion therefor, a subpœna will be issued by order of the court to the said keeper to appear and produce the said original in court for due examination there; and such proceedings being had herein, as that this claim was submitted to the court for its decree thereon; and the said court having examined the claim of the said petitioner, together with the exhibits and testimony filed herein, and the answer of the attorney of the United States, and having maturely considered the same, doth *order*, *adjudge*, and *decree*, that this claim is *valid*, and that, in accordance with the laws and customs of Spain, and under and by virtue of the late "treaty of amity, settlement, and limits, between the United States of America and the King of Spain," ratified by the President of the United States on the 22d February, 1821, and under and by virtue of the laws of nations and of the United States, it is hereby confirmed, adjudged, and decreed unto the said claimant, to the extent, and agreeably to the boundaries as in the royal titles for the said land filed herein, is set forth: Twenty thousand acres of the foregoing claim under a royal title to this petitioner for twenty-two thousand acres situated in the hammocks, known under the name of Cuscovilla and Chachala, situated west of the place of the river St. Johns where there was a store of the house of Panton, Leslie & Co., and about forty-five miles from it, have this

day been confirmed to Moses E. Levy on his petition for the same. The four thousand acres, remainder of said twenty six thousand acres claimed, being under a royal title of the same date with that for twenty-two thousand acres, is situated in the place called Yallahassasa, on the west side of the river St. Johns, and south of the public road which runs from the place where has been a commercial establishment under the management of John Hambly, who was agent of the house of Panton and Leslie, and about twenty-eight miles from it; the said tract forming an oblong square, bounded on its four sides by vacant pine lands. The said royal titles are issued under a concession to the said George J. F. Clarke for the said twenty-six thousand acres, of the same date with them.

And afterwards, before the superior court for the eastern district of Florida, holden at the court-house in the city of St. Augustine, at the term of October, in the year of our Lord one thousand eight hundred and thirty-two, to wit: on Saturday, the sixth day of said term, and the sixth of said month, the following appeal was entered of record in this cause, to wit:

GEORGE J. F. CLARKE,
against
THE UNITED STATES OF AMERICA. } *Land claim* 26,000 *acres.*

Appeal. This day came Thomas Douglass, esquire, attorney of the United States for this district, and moved the court that an appeal be granted in this case, on behalf of the said United States, from the decree of this court to the Supreme Court of the United States; which is granted accordingly.

And afterwards, before the superior court for the eastern district of Florida, holden at the court-house in the city of St Augustine, at the term of May, in the year of our Lord one thousand eight hundred and thirty-three, to wit: on Tuesday, the nineteenth day of said term, and the eleventh day of June, the following entry of record was made in this cause, to wit:

THE UNITED STATES,
ats.
GEORGE J. F. CLARKE. } *Land claim* 26,000 *acres.*

Revival of appeal. Now, on this day came Thomas Douglass, esquire, United States' attorney for the district of East Florida, and suggests to the court now here, that, since the granting of the appeal in the above cause to the Supreme Court of United States, a term of said court has intervened, and that the record herein has not been sent up to the said court: wherefore the said attorney, on behalf of the same United States, prays that the said appeal may be revived, and the order therefor extended, and a copy of the record in said cause, duly certified, may be sent up to the said Supreme Court before the first day of the next term thereof, to be holden on the second Monday of January next; and that citation, with notice of said appeal, may be forthwith issued by the clerk of this court to the appellee, and that the same may be served by the marshal of said district upon the said appellee or his solicitor or agent, and returned to this court within thirty days from the issuing thereof; which is ordered accordingly.

And afterwards, on the same eleventh day of June, in the year 1833, a citation of appeal, in pursuance of the above order, was issued in this case; which citation, and the return of the marshal of this district thereon, are in the words and figures following, to wit:

In the name and by the authority of the United States of America, to George J. F. Clarke, or to his agent, attorney, or solicitor, greeting:

Citation of appeal.

You are hereby cited and admonished that an appeal has been taken on the part of the United States from the decree of the superior court for East Florida to the Supreme Court of the United States in a certain claim to twenty-six thousand acres of land, wherein you, the said George J. F. Clarke, are claimant, and the said United States respondent; and that the record in said cause will be forwarded to the said Supreme Court to be placed on the docket of said court at the next term thereof, to be holden on the second Monday of January next.

Witness, the honorable Robert Raymond Reid, judge of our said superior court, at the court-house in the city of St. Augustine, this eleventh day of June, A. D. 1833.

[SEAL.]

GEORGE GIBBS, *Clerk*,
Per K. B. GIBBS, *Deputy Clerk.*

THOS. DOUGLASS, *U. S. Att'y for E. Florida.*
JOS. B. LANCASTER, *Attorney for Claimant.*

"Executed by delivering a true copy to the within named George J. F. Clarke. June 18, 1833."

"SAMUEL BLAIR, *Marshal.*"

SUPERIOR COURT, *District of East Florida, to wit:*

I, George Gibbs, clerk of the said court for the district of East Florida, do hereby certify that the foregoing one hundred and six pages and four lines contain a full, true, and complete transcript of the record and proceedings had in the case therein named in my charge. And that the five surveys and certificates thereto attached and made a part of this record are faithfully taken and copied from the said documents as offered in evidence in said cause, on file in my office.

In testimony whereof, I have hereto set my hand at the city of St. Augustine, this first day of July, one thousand eight hundred and thirty-three.

GEORGE GIBBS, *Clerk.*

By the honorable Robert Raymond Reid, judge of the superior court for the district of East Florida, to all to whom these presents shall come, be seen, or made known, greeting:

Know ye, that George Gibbs, who hath signed the aforegoing attestation, is clerk of the superior court for the district of East Florida; that all due faith and credit are, and ought to be, given to his acts as such, and that the aforegoing attestation is in due form of law.

In testimony whereof, I have hereto set my hand, and caused the seal of the said court to be hereunto affixed, this first day of July, A. D. 1833, and of the independence of the United States of America the fifty-seventh.

[L. S.]

ROBERT RAYMOND REID.